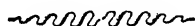


A
MANUAL OF LEGAL MAXIMS,
WORDS, PHRASES, &c.

CHIEFLY FROM LATIN
WITH NOTES SPECIALLY REFERRING
TO THE LAW IN FORCE
IN BRITISH INDIA.

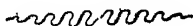


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not to be questioned ; and what is elsewhere called a *principle*, and is all one with a *rule*, a common ground, *postulatum* or *axiom* (*Co. Lit.* 10 b, 11 a).

Law axioms are nothing more than the conclusions of common sense, which have been formed and approved by the wisdom of ages (*Per Kent, C. J., 1 Johns. [U. S.] R. 571*).

They need not be proved because they are approved (*Coke*).

A maxim in law is said to be a proposition to be of all men confessed and granted without proof, argument or discourse. Maxims of the law holden for the law, and all other cases that may be applied to them shall be taken for granted (*1 Inst.* 11, 67 ; *Co. Lit.* 67 a ; 4 *Rep.*).

They are general dictates of reason running through the law, and constituting its ballast (*Bacon*).

Positions and theses, being conclusions of reason, and universal propositions, so perfect, that they may not be impugned or disputed (*Cowell ; Co. Lit.* 343).

Maxims are the foundations of the law, and conclusions of reason, therefore ought not to be impugned, but always to be admitted ; but they may by reason be conferred and compared the one with the other, though they do not vary ; or it may be discussed by reason, which thing is nearest the maxim, and the mean between the maxims, and which is not ; but the maxims can never be impeached or impugned, but ought always to be observed and held as firm principles and authorities of themselves (*Plowd.* 27 b).

Maxims are principles and authorities, and part of the general custom or common law of the land ; and are of the same strength as Acts of Parliament, when the judges have determined what is a maxim ; which belongs to the judges, and not a jury (*Terms de Ley ; Doct. and Stud., Dial 1, ch. 8*).

It is a *principium quod est quasi primum caput*, from which many cases have their origin or beginning, which is so strong, as it suffereth no contradiction ; and therefore it is said in our books, that ancient principles of the law ought not to be disputed, *contra negantem principia non est disputandum* (*Co. Lit.* 343 a).

Many of the customs and maxims of the laws of England be known by the use and the custom of the realm so apparently that it needeth not to have any law written thereof (*Doct. and Stud.*).

A maxim is a ground of the law, which standeth in divers principles that are called in the law maxims, and which have always been taken for law in this realm, so that it is not lawful for any that is learned to deny them ; for every one of those maxims is sufficient authority to himself And such maxims be not only holden for law, but also other cases like unto them, and all things that necessarily follow upon the

same are to be reduced to the like law ; and therefore most commonly there be assigned some reasons or considerations why such maxims be reasonable, to the intent that other cases like may the more conveniently be applied to them (*Doct. and Stud. Dial, 1, ch. 8*).

The alterations of any of the maxims of the common law are dangerous (*2 Inst. 210*).

So far, of course, as the maxims embody fundamental conceptions of justice, and are of the essence of the English law, they are valid and require to be reckoned for all time. But the wit of the jurist has occasionally devised axioms suitable only to his own epoch of legal development, and, consequently, bound to become obsolete. The line or growth of our system of jurisprudence is strewn with the relics of outworn rules, the exhuming of which is only of interest to the historian and archæologist. Again, some of the old maxims have been frequently misinterpreted, and some that are found in the books have been demonstrated to be entirely false and misleading. Even those whose usefulness has survived to our own day require judicious treatment in their practical application, as the exceptions and qualifications to them are more important than the so-called rules. While they cannot be ignored, their utility cannot be stretched beyond its proper boundary. They are first principles only, and not abidgments of the law. *

Many of the maxims of the common law are borrowed from the Civil Law, and are still quoted in the language of the Civil Law. The progress of civilization and commerce, the consequent increase of litigation and the growth of the Courts of Equity caused from time to time the introduction of many new maxims adapted to the increasing wants of justice. Again the canon law is the parent of many of the modern maxims.

In this work, the Maxims, Words, Phrases, &c., are arranged in their alphabetical order. Maxims which embody the leading principles of law and which are of frequent occurrence are printed in antique type. To facilitate the search of any maxim or maxims on a particular subject, an Index has been given arranging the maxims under different headings according to subject. Also a general Index and an Index showing the Acts and sections referred to have been given ; the latter, it is hoped, will be useful in finding out a maxim which has a bearing on a particular section of an Act,

As to the notes under the Maxims, the Compiler is chiefly indebted to the valuable work of Mr. Broom on Legal Maxims, from which he has taken useful extracts whenever it was found necessary to do so ; and as the chief object of the work is to illustrate the maxims with special reference to the Indian law, the Compiler has cited Indian cases side by

* The Law Times, 5th Oct, 1901, p. 505.

side with the English cases. It will be seen from these cases that the authority of the maxims is recognized and their weight duly acknowledged by Courts in British India. The Compiler has also referred to other standard Law Dictionaries, such as Wharton, Tomlins, Brown, Mozley, &c., in order to make the collection as exhaustive as possible.

The work is, in the first instance, intended for the use of students who frequently come across Latin maxims and phrases in the course of their study, and who, in absence of a proper guide, are obliged to pass them over without knowing their meaning and proper application. Hence to procure a general knowledge of the broad principles of law, the student will do well to study those maxims which, in view of their importance and frequent occurrence, are printed in antique type. The remaining portion of the work may be used for the purpose of reference. The Compiler further ventures to hope that the work is adequately equipped to become a serviceable *vade mecum* to the practitioner, to whom the Index to the maxims will be a ready and unerring guide.

With these words the Compiler leaves his humble work to the indulgence of his readers.

140, BAPU KHOTE STREET, }
Bombay, January 1902. }

D. N.

LIST OF ABBREVIATIONS.

A. C.	...	...	...	Appellate Civil Jurisdiction.
A. & E.	...	...	...	Adolphus and Ellis.
Abbrev.	...	...	...	Abbreviation.
Agra	...	...	...	Agra High Court Reports.
All.	...	...	...	Indian Law Reports, Allahabad Series.
All. W. N.	...	...	...	Allahabad Weekly Notes.
Ap.	...	...	...	Appendix.
App. Cas.	...	...	...	Appeal Cases.
B.	...	...	...	Baron.
B. & Ad.	...	...	...	Barnwall and Adolphus.
B. & Ald.	...	...	...	Barnwall and Alderson.
B. & B.	...	...	...	Broderip and Bingham.
B. & C.	...	...	...	Barnwall and Cresswell.
B. L. R.	...	...	...	Bengal Law Reports.
" S. N.	...	...	...	" " " Short Notes.
" Sup. Vol.	...	...	...	" " " Supplimentary Volume.
B. N. C.	...	...	...	Brooke's New Cases.
B. & P.	...	...	...	Bosanquet and Puller.
B. & S.	...	...	...	Best and Smith.
Beav.	...	...	...	Beavan.
Bing.	...	...	...	Bingham.
" N. C.	...	...	...	" New Cases.
Bom.	...	...	...	Indian Law Reports, Bombay Series.
Bom. H. C.	...	...	...	Bombay High Court Reports.
Bom. L. R.	...	...	...	Bombay Law Reporter.
Bro. C. C.	...	...	...	Brown's Reports of Cases in Chancery.
Bulst.	...	...	...	Bulstrode's Reports.
Burr. or Burrow	...	...	...	Burrow's Reports.
C. or Ch.	...	...	...	Chapter.
C. B.	...	...	...	Chief Baron, or Common Bench Reports.
C. B. N. S.	...	...	...	Common Bench Reports, New Series.
C. J.	...	...	...	Chief Justice.
C. L. R.	...	...	...	Calcutta Law Reports.
C. & M.	...	...	...	Carrington and Marsham.
C. & P.	...	...	...	Carrington and Payne.
C. P. D.	...	...	...	Law Reports, Common Pleas Division.
Cal....	...	...	...	Indian Law Reports, Calcutta Series.
Camp	...	...	...	Campbell.
Ch. D.	...	...	...	Chancery Division.
Cl. & F. or Cl. & Fin.	...	...	...	Clark and Finnelly.
Cowp.	...	...	...	Cowper's Reports.
Cox C. C. or Cox Crim. Ca.	...	...	...	Cox's Criminal Cases.
Cr. Ca.	...	...	...	Crown Cases.
Cr. & J.	...	...	...	Crompton and Jervis.
Cr. & M.	...	...	...	Crompton and Meeson.
Cr. M. & R.	...	...	...	Crompton, Meeson and Roscoe.
Cr. & Phil.	...	...	...	Craig and Phillips.
Cro. Jac.	...	...	...	Croke's Reports, time of James I.
Curt.	...	...	...	Curteis' Reports.

D. & L.	...	...	...	...	Dowling and Lowndes.
D. M. & G. or De G. M. & G.	...	...	...	...	De Gex, Macnaghten and Gordon.
D. & R.	...	...	...	...	Dowling and Ryland's Reports.
Dears.	...	...	...	...	Dearsley.
Dears. & B.	...	...	...	...	Dearsley and Bell.
De G. & Jo.	...	...	...	...	De Gex and Jones.
De G. & S.	...	...	...	...	De Gex and Smale.
Dods.	...	...	...	...	Dodson.
Dowl. N. S.	...	...	...	...	Dowling's Practice Reports, New Series.
Drew.	...	...	...	...	Drewry.
E. & B.	...	...	...	...	Ellis and Blackburn.
E. B. & E.	...	...	...	...	Ellis, Blackburn and Ellis.
E. & E.	...	...	...	...	Ellis and Ellis.
Eq.	...	...	...	...	Equity Reports.
Esp.	...	...	...	...	Espinasse.
Ex. or Exch.	...	...	...	...	Exchequer Reports.
Ex. D.	...	...	...	...	Exchequer Division.
F. B.	...	...	...	...	Full Bench.
F. & F.	...	...	...	...	Foster and Finlayson.
Fr. L.	...	...	...	...	French Law.
Giff.	...	...	...	...	Giffard.
H. Bl.	...	...	...	...	Henry Blackstone.
H. & C.	...	...	...	...	Hurlstone and Coltman.
H. L. Cas.	...	...	...	...	House of Lords Cases.
H. & N.	...	...	...	...	Hurlstone and Norman.
Howell, St. Tr.	...	...	...	...	Howell's State Trials.
Ind. Jur.	...	...	...	...	Indian Jurist.
J.	...	...	...	...	Justice.
JJ.	...	...	...	...	Justices.
Jur. N. S.	...	...	...	...	Jurist Reports, New Series.
L. J.	...	...	...	...	Law Journal Reports or Lord Justice.
L. J. Ch.	...	...	...	...	Law Journal Reports, Chancery.
" " C. P.	...	...	...	" " "	Common Pleas.
" " Ex.	...	...	...	" " "	Exchequer.
" " M. C.	...	...	...	" " "	Magistrates Cases.
" " Q. B.	...	...	...	" " "	Queen's Bench.
L. R.	...	...	...	...	Law Reports.
" " A. C.	...	...	...	" "	Appeal Cases.
" " C. C. R.	...	...	...	" "	Crown Cases Reserved.
" " C. P.	...	...	...	" "	Common Pleas.
" " Ch.	...	...	...	" "	Chancery.
" " Eq.	...	...	...	" "	Equity.
" " Exch.	...	...	...	" "	Exchequer.
" " H. L.	...	...	...	" "	House of Lords.
" " I. A.	...	...	...	" "	Indian Appeals.
" " P. C.	...	...	...	" "	Privy Council.
" " P. & D.	...	...	...	" "	Probate and Divorce.
" " Q. B.	...	...	...	" "	Queen's Bench.
Ld. Raym.	...	...	...	...	Lord Raymond's Reports.
Leon.	...	...	...	...	Leonard's Reports.
M. & Gr.	...	...	...	...	Manning and Granger.
M. & S.	...	...	...	...	Maule and Selwyn.
M. & W.	...	...	...	...	Messon and Welsby.
Macq.	...	...	...	...	Macqueen's Scotch Appeals.
Mad.	...	...	...	...	Indian Law Reports, Madras Series.

Mad. H. C. R.	...	...	...	Madras High Court Reports.
Marsh.	...	...	...	Marshall's Reports.
Mer.	...	...	...	Merivale.
Mod.	...	...	...	Leach's Modern Reports.
Mont. & Ch.	...	...	...	Montague and Chitty.
Moo. I. A.	...	...	...	Moore's Indian Appeals.
Moo. P. C.	...	...	...	Moore's Privy Council Cases.
My. & K.	...	...	...	Mylne and Keen.
N. R.	...	...	...	New Reports.
N.-W. P.	...	...	...	North-Western Provinces High Court Reports.
Nor.-Fr.	...	...	...	Norman-French.
O. C.	...	...	...	Original Civil Jurisdiction.
P. or pp.	...	...	...	Page or Pages.
P. C.	...	...	...	Privy Council.
P. J.	...	...	...	Printed Judgments of the Bombay High Court.
Phill.	...	...	...	Phillips.
Plowd.	...	...	...	Plowden.
Plur.	...	...	...	Plural.
Q. B.	...	...	...	Queen's Bench Reports.
Q. B. D.	...	...	...	Queen's Bench Division.
R. R.	...	...	...	Revised Reports.
Rep.	...	...	...	Coke's Reports.
Rom. L.	...	...	...	Roman Law.
Russ.	...	...	...	Russell.
Russ. & Ry.	...	...	...	Russell and Ryan.
S. or ss.	...	...	...	Section or Sections.
S. & S.	...	...	...	Simon and Stuart.
Salk.	...	...	...	Salkeld's Reports.
Saund.	...	...	...	Saunders' Reports.
Sc. L.	...	...	...	Scotch Law.
Scho. & Lefr.	...	...	...	Schoales and Lefroy.
Scott, N. R.	...	...	...	Scott's New Reports.
Sid. or Siderf.	...	...	...	Siderfin's Reports.
Sing.	...	...	...	Singular.
Sm. L. C.	...	...	...	Smith's Leading Cases.
Stark, N. P. C.	...	...	...	Starkie's Nisi Prius Cases.
Stra.	...	...	...	Strange's Reports.
Suth. P. C.	...	...	...	Sutherland's Privy Council Judgments.
T. R.	...	...	...	Term Reports (Durnford and East).
Taunt.	...	...	...	Taunton's Reports.
Ventr.	...	...	...	Ventris' Reports.
Vern.	...	...	...	Vernon's Reports.
Ves.	...	...	...	Vesey's Reports.
Ves. Sr.	...	...	...	Vesey Senior's Reports.
W. Bla.	...	...	...	Sir William Blackstone.
W. R.	...	...	...	Sutherland's Weekly Reporter.
„ Cr.	...	...	...	„ „ „ Criminal Rulings.
W. & T. L. C.	White and Tudor's Leading Cases.
Wils.	Wilson.
Y. & C. Ex. R.	Younge and Collyer, Exchequer Reports.

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ERRATA ET ADDENDA.

Col. 61, line 17 from bottom, for *Murry* read *Murray*.
 „ 62, „ 11 from bottom, for *Salked* read *Salkeld*.
 „ 96, „ 40, for 'yerrs' read 'years.'
 „ 128, „ 10, for *Johnston* read *Johnson*.
 „ 135, „ 13 from bottom, for 'write' read 'writ.'
 „ 161, „ 13, for *Clinton* read *Clinton*.
 „ 168, „ 38, for *Haralal* read *Hiralal*.
 „ 169, „ 12, for *Bhultacharjee* read *Bhuttacharjee*.
 „ „ „ 18, for *Dookbai* read *Dookhai*.
 „ 171, „ 4 from bottom, for *Sonatum* read *Sonatum*.
 „ 188, „ 9, for *Venkate* read *Venkata*.
 „ 215, „ 23, before 'Mad.' insert '7.'
 „ 272, „ 29, for 'laws' read 'law.'
 „ 278, „ 15, for 'reigned' read 'reined.'
 „ 289, „ 2 from bottom, for *Coope* read *Cooper*.
 „ 292, „ 13 from bottom, for '256' read '258.'
 „ 310, „ 22 from bottom, for 'IX of 1875' read 'X of 1873.'
 „ 319, „ 25 from bottom, for 'dessedved' read 'dissolved.'
 „ 322, „ 22 from bottom, for 'On' read 'One.'
 „ 378, „ 26, for 'Privileges' read 'Privilege.'
 „ 400, „ 28, for *Charistie* read *Christie*.
 „ 433, „ 23 from bottom, for *Campbell* read *Cambell*.

Col. 3.

Accessorium non ducit, sed sequitur suum principale.—

Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immoveable property (*Ind. Con. Act IX of 1872, s. 85*)

Col. 23.

Adversus extraneos vitiosa possessio prodesset. (*Rom., L.*) A defective possession is valid as against a stranger. See *Possessio est...*

Col. 28.

Affirmanti, non neganti, incumbit probatio.—

The plaintiff sued on a bond, which recited that the defendant had received the consideration mentioned in the bond. *Held*, that the *onus* was on the defendant to show that the recitals in the bond were not correct (*Fulli Bibi v. Bassirudi Midha*, 4 B. L. R., F. B., 54).

A sued B on a bond in which it was recited that B had received the amount. B in his written statement admitted execution, but stated that he had received the amount mentioned therein, not under the bond, but on the pledge of certain jewellery. *Held*, that on the admission of the execution of the bond, which contained the recital of payment, the *onus* was upon B to prove that payment had not been made under the bond (*Maniklal Baboo v. Ramdas Mazumdar*, 1 B. L. R., A. C., 92).

Col. 30.

Alienatio rei præfertur juri accrescendi.—

According to Hindu Law, a restriction against alienation in a gift of land to Brahmans is inoperative as being a condition repugnant to the nature of the grant. Where a grantor creates a secular estate with a religious motive, the grant does not stand on the same footing with a religious endowment, and is not exempt from the rule as to perpetuities (*Anantha Tirtha Chariar v. Nagamuthu Ambalagaren*, 4 Mad. 200).

Plaintiff, during his son's minority gave certain property to him, and on the delivery of possession got from him a document, stipulating (1) that he would not alienate; (2) that at his death the property should return to the father. This document was deposited with the father, and not heard of until the property was taken in execution for the son's debts many years after the gift. *Held*, that by Mahomedan law, as well as by the general principles of law, such a restriction on alienation, especially after the gift had become complete long before, is absolutely invalid (*Hussain Khan Bahadur v. Nateri Srinivasa Charlu*, 6 Mad. H. C. R. 356).

Col 43.

Aqua currit et debet currere ut currere solebat.—

The owners of a tank fed by natural streams, which depended for their supply on natural rainfall and surface-water, sued for an injunc-

tion to restrain superior riparian owners from damming the streams, or interfering with the supply of water, over which the plaintiffs claimed a right of easement. *Held*, (1) The Easement Act only declared the existing law as to easements over water. (2) An easement can therefore be acquired in regard to the water of the rainfall. But surface-water not flowing in a stream, and not permanently collected in a pool, tank, or otherwise, is not a subject of easement by prescription, though it may be the subject of an express grant or contract. (3) It is the natural right of every owner of land to collect or dispose of all water on the surface which does not pass in a defined channel. (4) Riparian owners are entitled to use and consume the water of the stream for drinking and household purposes, for watering their cattle, and irrigating their land, and for purposes of manufacture, subject to the conditions (i) that the use is reasonable, (ii) that it is required for their purposes as owners of the land, and (iii) that it does not destroy, or render useless, or materially diminish or affect the application of the water by inferior riparian owners in the exercise either of their natural right, or their right of easement if any (*Perumal v. Ramasami*, 11 Mad, 16).

Col. 57.

Benigna faciendæ sunt interpretationes....

In construing a Marathi document English cases so far as they turn on the use of particular words are of little assistance (*The Municipality of the City of Poona v. Vaman Rajaram Gholap*, P. J., 1894, p. 314; 19 Bom. 797).

When by will, an authority to adopt is given to a Hindu widow, it does not necessarily follow that the widow takes only a life estate in the property left to her under will, especially when the power of disposition over the property is given to her. The intention of the testator must be gathered from the terms of the will itself (*Toolsi Dass Kurmoikar v. Madan Gopal Dey*, 28 Cal. 499).

Col. 111.

Cujus est solum, ejus est usque ad cælum, et ad inferos.—

When the defendant, whose roof projected 3 feet and 2 inches over plaintiff's roof, erected, beneath his roof against his own wall, a weather board which projected only 3 feet, *held*, that the defendant had no right to introduce projections into his wall, as in so doing he necessarily interfered with the plaintiff's property which extended *usque ad cælum*, subject only to the defendant's easement to have the roof of his house extending over it (*Mangaldas v. Chunilal*, P. J., 1893, p. 310).

Col. 116.

Cursus curia est lex curia.—

A practice which is in contravention of the law, even if it is the practice of a High Court, cannot justify a Court in construing an Act of the Legislature in a manner contrary to its plain wording (*Balkaran Rai v. Gobind Nath Tiwari*, 12 All. 129, F. B.; All. W. N., 1890, p. 39).

Col. 165

Ex dolo malo non oritur actio.—

Where the plaintiff, claiming to be entitled, together with two of the defendants, to the office of archaka of a temple, sued for a declaration of his title, and for a declaration that an agreement entered into by them in 1886 with the other defendants was void as having been executed under coercion, and because part of the consideration was the withdrawal of a pending criminal charge of trespass and theft against them, *held*, that the agreement was void, although the withdrawal of the criminal proceedings formed part only of the consideration for it (*Srirangachariar v. Ramasami Ayyangar*, 18 Mad. 189).

A party to a proceeding is never disabled from showing that a judgment or order has been obtained by the adverse party by fraud (*Manoharam v. Kalidas*, 19 Bom. 821).

Col. 182

Extra territorium jus dicenti impune non paretur.—

Jurisdiction being properly territorial, and attaching with certain restrictions upon every person permanently or temporarily resident within the territory, does not follow a foreigner, after his withdrawal thence, living in another State. As to land within the territory jurisdiction always exists, and may exist over moveables within it; and exists in questions of *status*, or succession, governed by domicile. But no territorial legislation can give jurisdiction, which a Court of a Foreign State ought to recognize, over an absent foreigner owing no allegiance to the State so legislating. In a personal action, to which none of the above causes of jurisdiction apply, a decree pronounced by a Court of a Foreign State *in absentem*, the latter not having submitted himself to its authority, is by international law a nullity. Not to the Courts of the State in which the cause of action has arisen, nor in cases of contract to those of the *locus solutionis*, should resort be had by the plaintiffs, but to the Courts of the State in which the defendant resides, the Courts of the latter State having jurisdiction in all personal actions. *Ex parte* decrees for money were made in the territories of the

ruling Chief of Faridkot, a State in subordinate alliance with the Government of India, against a person who had been employed by that State within its territories, but had before suit brought, relinquished his employment, had left the State, and was then, at the time when he was sued, resident in another State of which he was the domiciled subject. *Held*, that these decrees were a nullity by international law, and could not receive effect in a British Indian Court. *Bequet v. Macarthy* (2 B. & Ad. 951) distinguished. The judgment of Blackburn, J., in *Schibsy v. Westenholz* (L. R. 6 Q. B. 155) referred to and explained. There is no ground for supposing, as did one of the Courts below, that no suit will lie upon the judgment of a recognized Foreign Indian State (*Gurdial Singh v. Raja of Faridkot*, 22 Cal. 222).

Col. 226.

In iure, non remota causa, sed proxima spectatur.—

In a suit for the removal of an obstruction in a public pathway, it was found by the Courts below that the plaintiffs were deprived of the only means of grazing their cattle by the obstruction, and that they lost some cows thereby. It was contended on behalf of the defendant, on second appeal, that such damage would not entitle the plaintiffs to maintain a suit in the Civil Court. *Held*, that the injury caused to the plaintiffs by the obstruction of the way leading from the village where they resided to that in which they had their fields and pastures was peculiar to them and to their calling, and it caused them substantial loss of time and inconvenience; and that it was sufficient to entitle the plaintiffs to maintain the action. *Held*, also, that the death of the cows was too remotely and indirectly connected with the obstruction to furnish a cause of action. *Winterbottom v. Lord Derby* (L. R. 2 Exch. 316), *Ricket v. Metropolitan R. Co.* (L. R. 2 H. L. 175), *Cook v. Mayor and Corporation of Bath* (L. R. 6 Eq. 177), *Baroda Prasad Mustafi v. Gora Chand Mustafi* (3 B. L. R., A. C., 295; 12 W. R. 160), *Gehanaaji v. Ganapati* (2 Bom. 469), *Raj Koomar Singh v. Sahebrada Roy* (3 Cal. 20), *Balgrave v. Bristol Water-Works Co.* (1 H. & N. 369), and *Rose v. Miles* (4 M. & S. 101) referred to.—*Abzul Miah v. Nasir Mahommed* (22 Cal. 551).

The plaintiffs chartered a ship of the defendant; and by the charter-party it was stipulated that the said ship, being tight, staunch and strong, should receive from the plaintiffs a full cargo of rice and grain. The penalty for non-performance of the charter-party was to be the estimated amount of freight. The plaintiffs having shipped very nearly the full cargo, had to stop loading on account of a notice from the defendant that the ship was leaking. The cargo had to be shifted, and a portion of it, found to be damaged, had

to be re-placed after the leak was stopped. The charges of shifting the cargo and the cost of the cargo substituted were paid by the defendant. Considerable delay had occurred in completing the loading in consequence of the leak. The plaintiffs had consequently to renew the bills which they had drawn for the value of the cargo and sold to the Comtoir d'Escompte de Paris, in anticipation of the delay, and had to pay interest on the bills in the meantime at 9 percent. per annum, and also the difference in the rate of exchange, and the value of the stamps on the bills which had been cancelled in pursuance of the plaintiff's arrangement with the Comtoir d'Escompte. In an action against the defendant for breach of the charter-party in not supplying a ship tight, staunch and strong, as stipulated, *held*, that such damages were too remote (*Robert and Charriol v. Isaac*, 6 B. L. R., Ap., 20).

A dispute having arisen regarding the possession of certain land an order was passed under the Code of Criminal Procedure forbidding both plaintiff and defendant to interfere with the land until either established his title in the civil Court. The land in consequence of this order was not cultivated in the following year. The plaintiff sued for damages for the loss of profits resulting from non cultivation of the land. *Held*, that the damages were not the probable result of the defendant's act, being the consequence of the order of the Magistrate (*Ammami v. Sellayi*, 6 Mad. 426).

Col. 238.

In satisfactionibus non permittitur amplius fieri quam semel factum est.—

Damages should be awarded according to the loss caused to plaintiff by the wrongful act of defendant; and where such act renders it probable that plaintiff will be a loser in future time, the award should embrace prospective loss (*Koomaree Dossee v. Rama Soondaree Dossee*, 10 W. R. 202).

Col. 247.

Judicis est judicare secundum allegata et probata.—

In a suit for the removal of a pucca building recently erected by defendant upon land lying between the premises of the two parties to the dispute where plaintiff's claim to use the land had been put upon his title as owner, *Held*, that having failed to make out the case originally set forth in the plaint, plaintiff had no right to fall back upon a title by prescription. *Held*, also, that plaintiff's claim must stand or fall upon the strength of his own right, not upon any such finding as that defendant was not entitled to the exclusive use of the land (*Bhoobun Mohun Mundule v. Rash Behary Paul*, 15 W. R. 84).

Col. 301.

Nemo agit in seipsum.—

Where an individual is a common partner in two houses of trade no action can be brought by one house against the other house upon any transaction between them while such individual is a common partner. This doctrine is founded on the rule that the same individual, even in two capacities, cannot be both a plaintiff and defendant to one and the same action. One partner cannot sue for money lent by him to a firm of which he is a member. The advance is but an item in the partnership account (*Rustomji v. Sheth Purshotamdas*, 25 Bom. 606).

Col. 433.

Res sua nemini servit.—

Plaintiff owned two pieces of land A and D; the latter he had purchased about ten years before the suit was instituted. He

claimed a right of way over another piece B situate between the two. It, however, appeared that up to the year 1881 he had claimed this plot of land as his own. *Held*, that no right of easement could under the circumstances be established. Because so long as the plaintiff claimed the plot as his own, he necessarily set up no pretensions as to a right of way over it, as an easement, and if his vendor had that right and plaintiff claimed through him, it was lost to him on account of his claim to the plot B as owner, a right of ownership and easement being incompatible (*Jalaluddin v. Asad Ali*, All. W. N., 1883, p. 66).

It is true that a man cannot acquire a right of easement upon his own land, and this principle may possibly extend to joint co-sharership of land. But the mere circumstance of one becoming a joint co-sharer after a right of easement has been acquired does not extinguish the right. Therefore, under s. 46 of the Easements Act, absolute ownership does, but a qualified ownership does not, extinguish a right of easement (*Jamaluddin v. Kamaluddin*, All. W. N., 1887, p. 260).

A

MANUAL OF LEGAL MAXIMS,

WORDS, PHRASES, &c.

AB

ABSQUE

A

Ab abusu ad usum non valet consequentia. From an abuse to a usage is not a valid consequence. That which is a nuisance does not become valid by lapse of time. A practice which is against public policy cannot be changed into a usage or custom.

Abactor. A stealer and driver away of cattle or beasts by herds or in great numbers at once, as distinguished from *fur*, a person who steals a single beast only.

Ab actu ad posse valet consecutio. The induction is good, from what has been to what may be. When a thing has once happened, it is but just to infer that such a matter may again occur.

Abactus. A driving away; driven away from office.

Abandonner. To give up to a proscription. To relinquish an interest or claim.

Ab ante. From before; beforehand.

Ab antiquo. Of an ancient date; of old.

Ab ardendo. From burning.

Ab assuetis non fit injuria. From things to which we are accustomed, no legal wrong results.

Ab autoritate et pronuntiatis. From books, records, and other authorities of law.

Abavia. A great grandmother's mother.

Abavus. A grandfather's grandfather; or a great-grandfather's father. See *Patr.*

Abbreviatio. An abridgment.

Abbreviationum, ille numerus et sensus accipiendus est, ut concessio non sit inanis.—In abbreviations, such number and sense is to be taken that the grant be not made void.

Abbreviatio Placitorum. An abstract of ancient pleadings prior to the year-books.

Abbreviator. An abridger; an officer who assisted in drawing up the Pope's briefs and reducing petitions into proper form, for their conversion into Papal Bulls.

Abbrevio. To shorten; to abridge.

Abdicatio. A renunciation or abdication of an office; the renouncing or disowning of a son.

Abdicatrix. She who renounces or disowns a thing.

Ab extra. From without; outside.

Abigeator, Abigenus. A stealer of cattle; the same as *Abactor*. Plural, *Abigei*.

Abigeatus. Cattle-stealing.

Ab impossibili. From that which is impossible.

Ab inconvenienti. From that which is inconvenient. See *Argumentum ab inconvenienti*...

Ab initio. At, or from, the beginning. A person who abuses an authority given him by law, becomes a trespasser *ab initio, i. e.*, is liable as a trespasser from the beginning. See *Acta exteriora... Causa et origo*...

Ab intestato. From, or by, an intestate; from a person who died without having made a will. As, succession *ab intestato*.

Ab integro. Afresh; anew.

Ab irato. By, or from, a man in anger.

Abnepos. A grandson of a grandson or granddaughter.

Abneptis. A granddaughter of a grandson or granddaughter.

Ab officio et beneficio. From his office (the discharge of his clerical functions) and his benefice. Applied to a suspension or discharge.

Ab olim ordinatum. Formerly ordained.

Ab ordine religionis. From the order of religion.

Ab origine. From the very first.

Absentia cum dolo et culpa. A wilful non-appearance to a writ, *subpoena*, citation, &c., to delay or defeat creditors, or avoid arrest.

Absentia ejus qui reipublica causa abest, neque ei, neque alii damnosa esse debet. The absence of any person who is abroad on the service of the State ought to be detrimental neither to him nor to another.

Absoluta sententia expositore non indiget. A positive decree is not in need of any interpreter.

Absolutum et directum dominium. An absolute and direct lordship. This is the highest kind of ownership of property.

Absolvi animam meam. I have done my duty. I have relieved my mind.

Absque hoc. Without this: a technical expression which was made use of in a special travers in ancient pleadings, now abolished.

Absque impetitione vasti. Without impeachment of waste. A reservation frequently

made to a tenant for life, that no man shall proceed against him for waste committed. This reservation does not extend to allow manifest injury to the inheritance.

Absque purgatione faciendā. Without purgation being made. See *Purgatio*.

Absque tali causā. Without such cause. A phrase formerly used in actions of trespass. Thus if the defendant alleged that he committed the trespass by authority derived from another, the plaintiff might reply that he committed it without the cause in his plea alleged, and of his own wrong. See *De injuriā sua...*

Absurdum est affirmare rei credendum esse non judicii. It is absurd to assert that the subject matter is to be relied upon, not the judge.

Absurdum est affirmare (re judicata) credendum esse non judicii. It is absurd to say, after judgment, that any one else than the judge should be harkened to.

Abundans cautela non nocet. Excessive caution causes no hurt. In written instruments express mention is often made of what the law would otherwise imply, in order to remove all doubt as to intention.

Ab utile vel inutile. From that which is profitable or unprofitable.

A capite ad calcem. From head to foot. Thoroughly; completely. From the beginning to the end.

Accipitare. To pay relief to lords of manors. See *Capitali domino...*

Acrapitum. Money paid by a vassal upon his admission to a feud or holding; the relief due to the chief lord.

Accedas ad curiam. That you go to the Court. An original writ to the sheriff issued out of Chancery where a man has received false judgement, or justice has been delayed.

Accedas ad vicecomitem. That you go to the sheriff. Where the sheriff has a writ called *pone* delivered to him, but suppresses it, this writ is sent to the coroner commanding him to deliver a writ to the sheriff.

Acceptator. One who accepts or approves.

Acceptilatio. The verbal extinction of a verbal contract, with a declaration that the debt has been paid when it has not, or the acceptance of something merely imaginary in satisfaction of a verbal contract.

Acceptio. A taking or accepting.

Acceptito. To be in the habit of receiving.

Accepto. To take or accept often.

Acceptor. One who assents to or allows.

Acceptrix. She who receives.

Accessio. The mode of acquisition of property by natural means; an accessory thing.

Accessio cedit principale. The increase follows the principal.

Accessorium non ducit, sed sequitur suum principale. That which is accessory or incident does not lead, but follows, its principal.

The incident shall pass by the grant of the

principal, but not the principal by the grant of the incident (*Per Vaughan, B., Harding v. Pollock*, 6 Bing. 63; 32 R. R. 47). See *Res accessoria... Cuiusque aliquis...* By the grant of a house, all the easements which are enjoyed in connection with the house pass without any express words to that effect (*Trans. of Pro. Act IV of 1882, s. 8; Ind. Eas. Act V of 1882, s. 19*). In the same manner all the title-deeds will also pass to the purchaser, as the owner of the house, for the time being, has *prima facie* a right to the title-deeds, as something annexed to the estate, though not granted by express words. So also, rent is incident to the reversion, and passes by a general grant of the reversion, though by a grant of the rent generally the reversion will not pass. If two properties are possessed by the same owner, and if a severance is made of one part from the other, anything which was used and was necessary for the comfortable enjoyment of that part of the property which is granted, shall be considered to follow from the grant if there are the usual words in the conveyance (*Ewart v. Cochran*, 4 Macq. 122). So, likewise, interest of money is accessory to the principal, and, therefore, if the plaintiff in any action is barred from recovering the principal, he must, as a rule, be equally barred from recovering the interest.

When an easement is extinguished, the rights, if any, accessory thereto are also extinguished. A has an easement to draw water from B's well. As accessory thereto, he has a right of way over B's land to and from the well. If the easement to draw water is extinguished, the right of way is also extinguished (*Ind. Eas. Act V of 1882, s. 48*).

Accessorium non trahit principale. The accessory does not lead the principal. The principal does not follow the accessory.

Accessorium sequitur suum principale. That which is the accessory or incident follows, i. e., goes with, its principal; as, e. g., in the case of crops or fixtures, which go as a rule with the land they are on.

Accessorius. An accessory; one guilty of a felonious offence, not principally, but by participation, as by command, advice, or concealment, &c. See *Particeps criminis*.

Accessorius sequitur naturam sui principalis. An accessory follows the nature of his (or its) principal. See *Accessorium non ducit...* But the conviction of an accessory does in no way depend upon the conviction of the principal offender (*Ind. P. C. XLV of 1860, s. 108, Expl. 3*). The offence of abettment under the Penal Code is a substantive offence. The conviction of the abettor is, therefore, in no way dependent on the conviction of the principal (*Reg. v. Maruti Dada*, 1 Bom. 15). Compare *Queen v. Begaraji Krishna* (6 Mad. 378).

Accusari nemo se debet, nisi coram Deo. No one is bound to accuse himself, unless in the presence of God. No oath is to be administered, whereby any person may be

compelled to confess a crime, or accuse himself. The law will not force any man to say or show that which is against him. Hence no oath is administered to the accused in criminal proceedings (*Code of Cri. Pro. V of 1898, s. 342*). But a witness is not excused from giving answers to questions which may tend to criminate him or to expose him to a penalty or forfeiture (*Ind. Evi. Act I of 1872, s. 132*).

Accusator. The complainant in a public action. See *Petitor*.

Accusator post rationabile tempus non est audiendus nisi se bene de omissione excuset. A complainant or accuser is not to be heard after the expiration of a reasonable time unless he can account satisfactorily for the delay. See *Vigilantibus...*

Ac etiam. And also. The introduction to the statement of the real cause of action in cases where it was necessary to allege a fictitious cause in order to give the Court of Queen's Bench a civil jurisdiction. The Court might take cognizance of the civil action only if the defendant was in custody of its marshal for a breach of the peace or any other offence. Hence the plaintiff proceeded against him by suing for an imaginary trespass and also (*ac etiam*) for the real claim.

Ac etiam billa. And also to a bill. Words in, or a clause of, a writ where the action required bail.

A communi observantia non est recedendum; et minime mutande sunt quae certum interpretationem habent. No deviation should be made from common usage or observance; and things which have an ascertained meaning are to be the least changed.

A communi praesumptione. From common presumption.

Acquietandis plegiis. An obsolete writ lying for a surety against the creditor who refuses to acquit him after the debt is satisfied.

Acquietantia de shiris et hundredis. Freedom from suits and services in shires and hundreds.

Acquietatus de felonía. He that is discharged of a felony.

Acta exteriora indicant interiora secreta. External acts indicate undisclosed thoughts. Exterior acts indicate the intention.

Though in *foro conscientiae* a fixed design or will to do an unlawful act is almost as heinous as the commission of it, yet as no temporal tribunal can search the heart or fathom the intentions of the mind, otherwise than as they are demonstrated by outward actions, it therefore cannot punish what it cannot know. Hence, in all temporal jurisdiction, an overt act, or some open evidence of an intended crime, is necessary in order to demonstrate the depravity of the will before the man becomes liable to punishment.

Where an act, in itself *indifferent*, if done with a particular intent, becomes criminal, there the intention must be proved and found; but where the act is *in itself unlawful*, the proof of justification lies on the defendant, and in failure thereof, the law implies a criminal intent (*Per Lord Mansfield, Rex v. Woodfall, 5 Burrows 2667*).

A person who does an act under a claim of right in good faith entertained by him, however erroneously, cannot be said to have a criminal intent (*Ex parte Karaka Nachiar, 3 Mad. H. C. R. 254*), for *nullus videtur dolo facere quo suo jure utitur*.

The law in some cases judges of a man's previous intentions by his subsequent acts, *animus ex qualitate facti praesumitur*, and on this principle it was decided in the Six Carpenters' Case (1 Sm. L. C., 10th Edn. 127) that if a man abuse an authority given him by the law, he becomes a trespasser *ab initio*, but that if he abuse an authority given him by the party, he does not. For instance, the law gives authority to a traveller to enter a common inn for refreshment; but if he, after entering, commits a trespass to the damage of the inn keeper, the law adjudges that he entered for the specific purpose of committing the injury, and as the act which demonstrates the intention is a trespass, he is adjudged a trespasser *ab initio*, the subsequent illegality showing that the party contemplated an illegality all along. On the other hand if a private person invites a guest to his house and the guest commits a trespass, he does not become a trespasser *ab initio*, because the license to enter was given by the party and not by the law. So the guest is not liable for entering the house, but for the abuse alone.

A sheriff who enters premises to execute a writ becomes a trespasser by remaining thereon for a longer time than is reasonable for that purpose. His delay to withdraw, however, does not invalidate his previous seizure of goods under the writ, nor does it render him a trespasser *ab initio* (*Lee v. Danger, 1892, 1 Q. B. 237; Percival v. Stamp, 9 Exch. 167; 23 L. J. Ex. 25*). So a gaoler, by detaining a prisoner beyond the time at which he ought to be discharged, becomes a trespasser (*Moone v. Rose, L. R. 4 Q. B. 486; 38 L. J. Q. B. 236*), but not, it appears, a trespasser *ab initio*, because it would be unreasonable to assume that he contemplated the illegality when he first received the prisoner (*Smith v. Egginton, 7 A. & E. 167*).

Actaindre le meffait. (Fr.). To fix the charge of a crime upon one; to prove a crime.

Actio ad exhibendum. An action for the purpose of compelling a defendant to exhibit a thing or title in his power. It was preparatory to another action for the recovery of a thing whether it was moveable or immoveable.

Actio bonae fidei. An action which the judge

decided according to equity, the *iudex* thus acting as *arbitrator* with a wide discretion.

Actio commodati contraria. An action by a borrower against a lender, to enforce the execution of a contract.

Actio condictio indebiti. An action for the recovery of a sum of money or other thing paid by mistake.

Actio contra defunctum capta continuatur in heredes. An action begun against a person who dies is continued against his heirs. But this rule does not apply to actions strictly personal. See *Actio personalis*....

Actio depositi contraria. An action which a depositary has against a depositor, to compel him to fulfil his engagement towards him.

Actio depositi directa. In action by a depositor against a depositary, in order to get back the thing deposited.

Actio ex conducto. An action by a bailor of a thing for hire, against a bailee, to compel him to deliver the thing hired.

Actio exercitoria. An action brought against the owner of a ship (exercitor) who employed his slave to navigate her, on contracts made by the slave in such capacity.

Actio insistoria. An action brought against the owner of a ship who employed his slave to conduct it, on contracts made by the slave in such capacity.

Actio iudicati. An action after four months had elapsed from the rendition of judgment, in which the Judge issued his warrant to seize first the moveables, and then the immoveables, of the debtor, in order to satisfy his debts.

Actionare. To prosecute a person in a cause at law.

Actiones compositæ sunt, quibus inter se homines disceptarent; quas actiones, ne populus prout vellet institueret, certas solennesque esse voluerunt. Forms of actions have been framed, by which men dispute amongst themselves; which forms are made definite and solemn lest the people proceed as they think proper.

Actiones in personam, quæ adversus eum intenduntur, qui ex contractu vel delicto obligatus est aliquid dare vel concedere. Personal actions are those which are brought against him who, from a contract or tort is obliged to give or allow something.

Actiones nominatæ. Named actions. Writs for which there were precedents, as distinguished from *Actiones innominatæ*.

Actio nihil aliud est quam ius prosequendi in iudicio quod alicui debetur. An action is nothing else than the right of prosecuting in a judicial proceeding that which is due to any one.

Actio non. *Actionem non.* The formal commencement of a plea in bar, "that the said plaintiff ought not to have or maintain his aforesaid action" &c. (*Actionem non habere debet, &c.*). Hence technically termed the *actio non*. Now abolished.

Actio non accrevit infra sex annos. The name of the plea of the Statute of Limitations, when the defendant alleges that the plaintiff's action has not occurred within six years.

Actio non datur non damnificato. An action is not given to him who is not injured. See *In jure, non remota*....

Actio non habere debet. An action does not lie.

Actionum genera maxime sunt servanda. The nature of actions is chiefly to be attended to.

Actionum quædam sunt in rem, quædam in personam, et quædam mixtæ. Some actions are against the thing, some against the person, and some mixed.

Actio personalis moritur cum persona. A personal right of action dies with the person. This means that rights of action arising out of torts are destroyed by the death of the person injured or injuring. As if battery be done to a man, if he who did the battery or the other die, the action is gone. But this rule of Common Law has been encroached upon by various Statutes. See 4 Edw. III, c. 7 and 3 and 4 Wm. IV, c. 42, as to trespass; and 9 and 10 Vic. c. 93 (Lord Campbell's Act), as to negligently causing death. See also Act XIII of 1855 (Compensation for loss caused by death): and probably the only application of the maxim now is to torts to the reputation; as by libel, slander or his daughter's seduction. In such cases no action is maintainable by his executors or administrators, for they represent not so much the person as the personal estate of the deceased.

No action is maintainable by an executor or administrator for a breach of promise of marriage made to the deceased, where no special damage is alleged, for the breach only imports a personal injury (*Chamberlain v. Williamson*, 2 M. & S. 408; 15 R. R. 295); and so, with respect to injuries affecting the life or health of the deceased, such as personal injuries arising out of the unskilfulness of a medical practitioner, unless some damage done to the personal estate of the deceased be alleged, as the expenditure of money or the loss for a time of the profits of a business, or the wages of labour.

Act XIII of 1855 which is founded on Lord Campbell's Act, gives no cause of action to the family of the deceased unless the injured person was entitled, at the time of his death, to bring an action for his personal injuries (s. 1). Consequently, the relatives cannot recover anything if the death ensued on account of the contributory negligence of the deceased (*Witherley v. Regent's Canal Co.*, 12 C. B. N. S. 2; *Pym v. G. N. R. Co.*, 4 B. & S. 890). So also, the relations lose their remedy under the Act, if the wrong-doer himself dies whether before or after the death of the person whom he injured. For the Act supplies no remedy either to the injured person or to

his relatives after his death, against the executors or administrators of the wrong-doer.

Upon the question whether the common law supplies any remedy by action against the personal representatives of a wrong-doer for a tort committed by him to property *Phillips v. Homfray* (24 Ch. D. 439: 52 L. J. Ch. 833) may be regarded as a leading case. In that case the trespass to land was by secret use of certain underground ways without the landowner's knowledge. During the pendency of the action against the trespasser to recover compensation, the latter died and the landowner sought to continue the action against the executors of the trespasser. *Held*, that the maxim applied. Bowen, L. J., observed "The only cases in which, apart from questions of breach of contract, express or implied, a remedy for wrongful act can be pursued against the estate of a deceased person who has done the Act, appears to us to be those in which property, or the proceeds or value of property, belonging to another have been appropriated by the deceased person and added to his own estate or moneys." The extent and limits of this common law maxim may be thus summed up that if an injury were done either to the person or property of another for which damages only could be recovered in satisfaction, the action died with the person to whom or by whom the wrong was done; but this rule was never extended to such personal actions as were founded upon any obligation, contract, debt, covenant, or any other duty to be performed; for there the action survived.

Act XII of 1855 (8 & 4 Wm. IV, c. 42) enables executors, administrators or representatives in certain cases to sue and be sued in respect of certain wrongs, which otherwise did not survive to them (s. 1) and no action commenced under the provisions of this Act shall abate by reason of the death of either party but may be continued by or against the executors, administrators or representatives of the party deceased (s. 2).

The plaintiff sued to recover damages from the defendant's father, Ramdas, for wrongful arrest and malicious prosecution. During the pendency of the suit Ramdas died, and the plaintiff substituted the defendant as his heir and representative. *Held*, that the suit abated on the death of Ramdas, his estate having derived no benefit, but, on the other hand, suffered loss in consequence of his wrong-doing. It was contended for the plaintiff that Act XII of 1855 gave the plaintiff a right to continue his suit against the heir of Ramdas. *Held*, that Act XII of 1855 did not apply to a suit, such as this, brought originally against the wrong-doer himself, and only subsequently sought to be continued against his heir (*Haridas Ramdas v. Ramdas Mathuradas*, 13 Bom. 677).

In cases where the right to sue survives, the death of the plaintiff or defendant shall not cause the suit to abate (*Code of Civ. Pro. XIV of 1882, s. 361*).

Actio pœnalis in hæredem non datur, nisi forte ex damno locupletior hæres factus sit. A penal action is not given against an heir, unless such heir is benefited by the wrong. See *Crimina morte...*

Actio præjudicialis. An action arising from some preliminary doubt, as in case a man sue his younger brother for lands descended from the father, and it is objected against him that he is a bastard, this point of bastardy must be tried before the cause can proceed.

Actio pro socio. An action by which either partner could compel his copartners to perform their social contract.

Actio qualibet it sua viâ. Every action proceeds in its own way.

Actio redhibitoria. An action brought by a purchaser to recover the price, for breach of implied warranty on the sale.

Actio super casum. An action on the case.

Actio utilis. A beneficial action.

Actor. A plaintiff; a complainant. Also a proctor or advocate in civil courts or causes.

Actor dominicus. The lord's bailiff or attorney.

Actor ecclesie. The advocate or pleading patron of a church.

Actores fabulæ. Agents of a fiction; players.

Actori incumbit onus probandi. The burden of proof rests with the plaintiff or complainant. Generally, it is the plaintiff, who desires the the Court to give judgment as to any legal right or liability, and whoever desires the Court to give such judgment relying on the existence of facts which he asserts must prove that those facts exist (*Ind. Evi. Act I of 1872, s. 101*).

Actori non probante, absolvitur reus. The prosecutor failing to prove his case, the defendant or accused is acquitted. See *Affirmanti...*

Actor qui contra regulam quid abduxit non est audiendus. A plaintiff is not to be heard who has advanced anything against authority.

Actor sequitur forum rei. A plaintiff follows the Court of the defendant. A maxim adopted from the Roman Law importing that the plaintiff in an action must bring his action against the defendant in that country to the laws of which the defendant is amenable. But the possession of property in a country makes a person amenable to the laws of that country, even though he is a foreigner or resident abroad.

Actor villa. The steward or head bailiff of a town or village.

Actuarius. A notary.

Actum agere. To labour in vain.

Actus. A servitude of foot-way and horse-way; the right of driving either cattle or carriages through a place; a road between fields.

Actus contra actum. A mutual consent.

Actus curiæ (or legis) neminem gravabit. An act of the Court shall prejudice no man. An act of the Court will hurt no person.

In virtue of this maxim where a case stands over for argument from time to time on account of multiplicity of business in the Court, or from the intricacy of the question, the party ought not to be prejudiced by that delay, but should be allowed to enter up his judgement retrospectively to meet the justice of the case. If one party to an action die during a *curia advisari vult*, judgment may be entered *nunc pro tunc*, for the delay is the act of the Court, and therefore neither party should suffer for it. (*Cumber v. Wane*, 1 Stra. 425). Cases, however, occur, in which injury is caused by the act of a legal tribunal, as by the laches or mistake of its officer; and where, notwithstanding the maxim, the injured party is without redress.

The successful plaintiff in a suit died a few days after the hearing of the suit was concluded and judgment reserved. Unaware of the death of the plaintiff, the Court proceeded to give judgment and pass a decree in favour of the deceased plaintiff. *Held*, that nothing remaining to be done by the parties on the day when the judgment was delivered, the judgment should read as from that date, and the decree was a valid decree, although no person was brought on the record as the representative of the plaintiff. The Court observed:—"This is a matter which has been long disposed of in England by the application of a large general principal of law, *actus curiæ nemini facit injuriam*. The principle was applied in the leading case of *Cumber v. Wane* (1 Smith, L. C. 10th Edn. 325). A defendant in error died after the time when the Court took time to consider. It was prayed that the judgment might be entered *nunc pro tunc*, in other words that the judgment should be dated as of the day when the Court reserved its decision, and to that prayer the Court acceded..... Nothing was left to be done by the parties from the moment the judgment was reserved. Any delay which took place was the delay of the Court, and we are not surprised to find that the English practice has been followed by the Courts in this country, notably in the case of *Ramacharya v. Anantacharya* (21 Bom. 314)..... A similar view has been taken by the Privy Council in the case of *Surendro Keshab Roy v. Doorgascondery* (19 Cal. 513)."—*Chatan Charam Das v. Balbadra Das* (21 All. 314).

The Limitation Act XIV of 1859 came into force on the 1st January 1862. By an order of the Civil Court it was declared that all suits brought on the 4th January 1862, when the Court was re-opened after the adjournment of the Christmas holidays should be treated as if brought under the old law of limitation. A suit was brought on the 4th January 1862, which was barred by Act XIV of 1859. The Civil Judge con-

sidered that the suit was not barred in consequence of the order above alluded to. *Held*, that the Act applied, and that the suit was barred. The maxim *actus curiæ neminem gravabit* observed upon (*Kambinayani Savaji v. Uddighirri*, 2 Mad. H. C. R. 268).

The plaintiffs as sharers in certain rent sued to recover their share. Defendants contended that all the co-sharers were necessary parties. At the hearing, on the 24th January 1889, the plaintiff's co-sharers applied to be made co-plaintiffs. The application was rejected and the suit dismissed for want of parties. In July 1890, the appellate Court, holding that the lower Court ought to have joined the co-sharers, passed an order making them co-plaintiffs, and then confirmed the lower Court's decree on the ground that at the time (3rd July 1890) the co-sharers were made plaintiffs, the suit was barred by limitation. On appeal to the High Court, *Held*, that the order of the lower appellate Court, of the 3rd July 1890, allowing the co-sharers' application, which had been made on the 24th January 1889, but had been refused by the Court of first instance, should be treated as operating *nunc pro tunc*, and that the co-sharers should be regarded as having been made parties to the suit when their application was made. The delay was attributable to the act of the Court, and the plaintiffs should not suffer from it (*Ram Krishna Moreshwar v. Ramabai*, 17 Bom. 29).

It is a generally recognized principle of law that where parties are prevented from doing a thing in Court on a particular day (being a Sunday or other holiday), not by any act of their own, but by the Court itself, they are entitled to do it at the first subsequent opportunity. This principle is adopted not only in the Indian Limitation Act XV of 1877, s. 5, but it is extended to cases not governed by the Limitation Act (*Pearry Mohun Aich v. Anunda Charan Biswas*, 18 Cal. 681; *Shoshee Bhusan Rudro v. Gobind Chunder Roy*, 18 Cal. 231; *Samba Siva Chari v. Ramasami Reddi*, 22 Mad. 179; *Nijabuttolla v. Wazir Ali*, 8 Cal. 910; 10 C. L. R. 333; *Khosheal Mahton v. Gunesb Dutt*, 7 Cal. 690, following *Golap Chand v. Kristo Chunder*, 5 Cal. 314, and *Hossein Ally v. Donzelle*, *Ibid.*, 906, and dissenting from *Puran Chunder v. Mutty Lal*, 4 Cal. 50; 2 C. L. R. 543).

The sentence of death cannot be executed on a woman who is pregnant, because such execution will injure the child in the womb. See *Quo pregnantis*...

Actus Dei necnon legis nemini est damnosus aut facit injuriam. An act of God and also of Law is hurtful, or operates an injury, to no one.

Actus Dei nemini facit injuriam. The act of God causes injury to no man.

Actus Dei neminem gravabit (or *nemini nocet*). An act of God prejudices no man. The law holds no man responsible for the act of God. Duties are either imposed by

law or undertaken by contract. When the law creates a duty and the party is disabled from performing it without any fault of his own by the act of God, the law excuses him; but when a party by his own contract creates a duty upon himself he is bound to make it good notwithstanding any accident by inevitable necessity (*Paradine v. Jane*, Aleyn 26; *Nichols v. Marsland*, 2 Ex. D. 1; 46 L. J. Ex. 174).

The act of God means an inevitable accident due directly to natural causes without human intervention, which, it would be unreasonable, under all the circumstances of the case, to expect a person to foresee and prevent, or to resist or avert its consequences, such as storms, tempests, lightning, &c. A person, by constructing an artificial lake upon his land for his private purposes, incurs the duty to prevent an escape of the waters to his neighbour's damage. But the duty does not extend to an escape due, without fault, to an act of God, as an extraordinary rainfall which could not have been anticipated (*Nichols v. Marsland*, *supra*; *Madras Railway Co. v. Zamindar of Kavatinagur*, 14 B. L. R. P. C. 209; 6 Mad. H. C. R. 180). So in the case of fire kept in a man's house or field and spread by the act of God, as by a sudden irresistible storm (*Tabervil v. Stamp*, 1 Salk. 13; 1 Ld. Raym. 264). A general covenant by a tenant for years to keep the premises in repair obliges him to repair damage done by accidental fire or by lightning, tempest or other unavoidable contingency, unless special provisions regarding such contingencies are introduced into the lease for the tenant's protection. The destruction of the demised premises by an act of God does not absolve the lessee from liability to pay the rent, notwithstanding that neither he nor the lessor be bound to restore them. But the Transfer of Property Act (IV of 1882), s. 108 (e) provides, in the absence of a contract or local usage to the contrary, that if, by fire, tempest, or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void: Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision. So *held*, where the coffee plants in a coffee garden were destroyed by fire, and the garden had been consequently abandoned by the lessee, that the latter was not liable to pay the rent (*Kunhayen Haji v. Mayan*, 17 Mad. 98).

A contract to do an act which, after the contract is made, becomes impossible, becomes void when the act becomes impossible (*Ind. Con. Act IX of 1872*, s. 56). But a person who contracts *absolutely* to do a thing not naturally impossible is not excused for non-

performance because of being prevented by the act of God (*Lloyd v. Guibert*, L. R. 1 Q. B. 115). Thus where a contractor built a bridge across a river under an agreement which bound him, to keep it in repair during a fixed term, and during that term the bridge was destroyed by an extraordinary flood, it was held that he was liable to rebuild it (*Brecknock Co. v. Pritchard*, 6 T. R. 750; 3 R. R. 335). Where the clear intention of the parties was that one of them should do a certain thing, but he is allowed at his option to do it in one of two modes, and one of these modes becomes impossible by the act of God, he is bound to perform it in the other mode (*Barkworth v. Young*, 4 Drew. 1; 26 L. J. Ch. 153).

Common carriers are not liable for goods lost, damaged, or delayed, when such loss damage or delay arises from the act of God, as storms, tempests, and the like. The loss in such cases falls upon the owner. But they are liable if such loss arises from their own negligence or criminal act, or of their agents or servants (*Ind. Con. Act IX of 1872*, ss. 151-2; *Common Carriers' Act III of 1865*, s. 8).

A mortgage deed stipulated that in the event of the mortgaged house being destroyed by *asmani sultani* (i. e., evils from the skies or the king) the mortgagor should re-build it. The house was destroyed by fire which originated in another part of the village. *Held*, that the destruction of the house was in the nature of a calamity from heaven within the meaning of the term *asmani* (*Sakharamshet v. Amtha Derjee Gandhi*, 14 Bom. 28). Where the mortgaged property in the possession of the mortgagee was destroyed by fire, *Held*, that the loss of the premises which had arisen from accidental causes did not affect the mortgagee's right to recover the full amount due to him on the mortgage (*Venkateshwara v. Kasaya Shetti*, 2 Mad. 187). See also *Jamshetjee Burjorjee v. Ebrahim Vydina* (13 Bom. 183), under the maxim *Volenti non fit injuria*.

Under the Penal Code, nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge, in the doing of a lawful act in a lawful manner, by lawful means, and with proper care and caution (s. 80).

Actus inceptus cujus perfectio pendet ex voluntate partium, revocari potest; si autem pendet ex voluntate tertia persona, vel ex contingenti, revocari non potest. An act already begun, the completion of which depends on the will of the parties, may be revoked; but if it depend on the consent of a third person, or on a contingency, it cannot be revoked.

Actus judicarius coram non iudice irritus habetur, de ministeriali autem a quocunque proventit ratum esto. A judicial act by a Judge without jurisdiction is void; but a ministerial act, from whomsoever proceeding, may be ratified.

Actus legis nemini est damnosus. An act in law shall prejudice no man. If a lease contains a covenant or condition against assignment, an involuntary assignment by operation of law, as under the execution of a decree or the bankruptcy of the party, is not a breach of the covenant or condition (*Doe v. Carter*, 4 R. R. 586; *Doe v. Smith*, 15 R. R. 660).

Actus legis nemini facit injuriam. An act of the Law does injury to no man. See *Actus curie*....

Actus legitimi non recipiunt modum. Legal actions do not admit a limitation.

Actus me invito factus, non est meus actus. An act done by me against my will is not my act. Thus the law presumes coercion by a prince over his subject, and by a husband (in general) over his wife. If a person be compelled through fear of duress (imprisonment) to give a bond, or other writing, the deed is rendered void by the compulsion (*Ind. Con. Act IX* of 1872, ss. 15 and 19).

Actus non facit reum, nisi mens sit rea. The act itself does not make a man guilty, unless his intention were so. The intent and the act must both concur to constitute the crime.

It seems not inaccurate that, as a general rule of our law, a guilty mind is an essential ingredient of crime, and that this rule ought to be borne in mind in construing all penal statutes, in which the mental element is always marked by the word "maliciously" "fraudulently," "negligently" or "knowingly." The rule, however, is not inflexible, and a statute may relate to such a subject matter and may be so framed as to make an act criminal whether or not there has been any intention to break the law or otherwise to do wrong. The two leading cases on this maxim are *Reg. v. Tolson* (23 Q. B. D. 164; 58 L. J. M. C. 97) and *Reg. v. Prince* (L. R. 2 C. C. R. 154; 44 L. J. M. C. 122). In the former case, where a woman was indicted for bigamy, it was held a good defence that she believed on reasonable grounds that her husband was dead. In the latter case the prisoner was charged with unlawfully taking an unmarried girl under the age of sixteen out of the possession and against the will of her father. It was held that the prisoner was not to be excused merely because he believed that the girl was over that age. So also, it was ruled in *Reg. v. Olliver* (10 Cox Crim. Cases 402) that a man deals with an unmarried girl at his peril and in that case the fact that she had told him she was seventeen was held not to excuse him. In *Reg. v. Robins* (1 F. & F. 50), Cockburn, C. J., ruled to the same effect. See s. 361 of the Indian Penal Code (XLV of 1860). But if the prisoner has substantial ground for supposing that the girl was over the specified age, the case might be brought within s. 79 of the Code. (Starling's Ind. Crim. Law, 5th Edn., p. 418).

Again a master, who is civilly responsible for the acts of his servant, is not criminally responsible for the same, for the condition of the servant's mind is not to be imputed to the master (*Chilson v. Doulton* 22 Q. B. D. 736; 58 L. J. Q. B. 133; *Massey v. Morris*, 1894, 2 Q. B. 412; 63 L. J. M. C. 185), unless the master was in fact an abettor of the acts complained of. Intention may generally be proved by overt acts, for *acta exteriora indicant interiora secreta*.

In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will (*Ind. P. C. XLV* of 1860, s. 86). Voluntary intoxication is not a valid plea for an offence (*Queen v. Bodhee Khan*, 5 W. R., Cr. 79; *Queen v. Ramsahoy Bhur*, W. R., 1864 [Gap. No.] p. 12).

So long as an act rests in bare intention, it is not punishable; but when the act is done, the law judges not only of the act itself but of the intent with which it was done.

A criminal intent cannot justly be imputed to persons who, by reason of their mental imbecility, or immature years are under a natural disability of distinguishing between good and evil, for *in omnibus penalibus judiciis et aetati et imprudentia succuritur; furiosi nulla voluntas est; furiosus solo furore punitur*. See the *Ind. P. C. XLV* of 1860, ss. 82 to 84.

If a malefactor conceive a malicious intent in the execution of which he does harm to another person, he is equally guilty although he had no intention of doing an injury to that particular person, the rule being *in criminalibus sufficit generalis malitia intentionis cum facto paris gradus*. So where an accused killed A, whom he had no intention of killing, by a blow with a highly lethal weapon like a sharp *dao* intended to kill B, he was held guilty of the murder of A (*Queen v. Phomonee Ahum*, 8 W. R. Cr. 78; *Ind. P. C. XLV* of 1860, s. 301).

It is not considered an offence which is done by accident or misfortune, and without any criminal intention or knowledge, in the doing of a lawful act in a lawful manner by lawful means, and with proper care and caution (*Ind. P. C. XLV* of 1860, s. 80).

Except murder and offences against the State, punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats of instant death (*Ibid.*, s. 94).

So also, nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to

cause harm, and in good faith, for the purpose of preventing or avoiding other harm to person or property (*Ibid.*, s. 81).

Ad aliud examen. To another trial or jurisdiction.

Ad assisas capiendas. To take assizes.

Ad audiendum errores. To hear errors.

Ad audiendum et determinandum. To hear and to determine.

Ad colligendum bona defuncti. To collect the goods of the deceased; as applied to an administration of assets.

Ad communem legum. At common law. A writ *ad communem legum* was a writ of entry brought by a person entitled in reversion to recover land which had been alienated by the tenant for life.

Ad comparendum et ad standum juri. To appear and to stand to the Law, *i. e.*, abide the judgment of the Court.

Ad computandum et rehabendam terram. To account and repossess the land.

Ad consulendum regem. To advise with the king.

Adcordabilis donarii. Money paid by a vassal to his lord upon the selling or exchange of a feud.

Adcredulitate. To purge one's self of an offence by oath.

Ad damnum. To the loss or damage. That part of the writ which states the amount of the plaintiff's injury.

Ad damnum ipsorum. To the damage of them.

Ad defendendum regem. To defend the king.

Addenda. Additions.

Addico. To award or adjudge any person or thing to one; to confiscate.

Addictio. The award or adjudication. The giving up to a creditor of his debtor's person by a magistrate; the ordinary means of execution under a law which did not allow execution of a debtor's property.

Addictio bonorum libertatis causâ. An assignment of an inheritance to a nominal *hears* for the sake of giving effect to the liberties bequeathed by the will, and which liberties were in danger of falling through from want of an executor of the will (*i. e.*, *hears*).

Addictus. One made over to his creditor for debt.

Ad diem. At or to the day.

Additio probat minoritatem. An addition proves minority.

Ad ea quæ frequentius accidunt jura adaptantur. The laws are adapted to those cases which more frequently occur. Laws ought to be, and frequently are, framed with a view to such cases as are of frequent rather than such as are of rare or accidental occurrence. The laws cannot be so worded as to include every case which

may arise, but it is sufficient if they apply to those things which most frequently happen. All legislation proceeds upon the principle of providing for the ordinary course of things (*Masted v. Paine*, L.R. 6 Ex. 132; 40 L. J. Ex. 57). When the words of a law extend not to an inconvenience rarely happening, but do to those which often happen, it is good reason not so strain the words further than they reach, by saying it is *casus omissus*, and that the law intended *quæ frequentius accidunt*, on the principle *quod semel aut bis existit prætereunt leges*. A case thus unprovided for must be disposed of according to the law as it existed before such statute, *casus omissus et oblivioni datus dispositioni communis juris relinquitur*.

Adeo languidus. See *Duces tunc licet...*

Ad executionem decretorum judicii, ad æstimationem pretii, damni, lucri, &c. To the execution of the decrees of judgment, to the valuation of the sum, the damage, profit, &c.

Ad exheredationem episcopi vel ecclesiæ. To the disinheriting of the bishop or the church.

Ad exhibendum. An action for production of the thing borrowed.

Ad fabricum reparandum. To repair the fabric of a cathedral or church. Fabric lands, *i. e.*, lands given to provide for the rebuilding or repair of cathedrals and churches.

Ad faciendum attornatum. To appoint an attorney: to appear by attorney.

Ad faciendum, subjiciendum et recipiendum. To do, submit to, and receive. See *Habeas corpus*.

Ad feodi firmam. To fee farm.

Ad filum aquæ. To the thread or centre line of the stream. See *Aqua cedit solo*.

Ad filum viæ. To the centre of the way or road. See *Aqua cedit solo*.

Ad finem. At or near to the end. Abbrev. *Ad fin.*

Adgnati. See *Agnati*.

Ad hoc. For this purpose, thing, matter or object.

Adhuc existit. It still exists.

Ad idem. Tallying in the essential point. See *Assensus ad...*

A digniori fieri debet denominatio est resolutio. The title and exposition ought to be made from that which is the more worthy.

Ad infinitum. Without limit; to eternity; to endless extent.

Ad informandam conscientiam. To inform the conscience.

Ad inquirendum. To inquire into. A judicial writ commanding inquiry to be made of anything relating to a cause in the Supreme Courts.

Ad interim. In the meantime; temporary.

Adipiscende possessionis causa. (Rom. L.) For the acquiring of the possession.

Adire hereditatem. To accept the succession.

Aditio hereditatis. The entry of the *hares* or executor upon the inheritance, whether coming to him under a will or under an intestacy. It was distinguished from *gestio pro herede*, which was acting as *hares* before the *aditio*. The executor's obtaining probate of the will, or the administrator's obtaining a grant of administration, corresponds with the *aditio* of the *hares*; and the intermeddling of either before the grant of probate or administration corresponds with the *gestio* of the *hares*.

Adjournamentum est ad diem dicere, seu diem dare. An adjournment is to appoint a day, or to give a day.

Adjudicatio. An adjudication.

Adjudicatio contra hereditatem jacentem. (Sc. L.). When a debtor's heir apparent renounces the succession, any creditor may obtain a decree *cognitionis causa*, the purpose of which is that the amount of the debt may be ascertained so that the real estate may be adjudged.

Adjunctum accessorium. An accessory or appurtenance.

Ad jura regis. A writ which was brought by the king's clerk presented to a living, against those who endeavoured to eject him to the prejudice of the king's title.

Adjuvari quippe nos, non decipi beneficio oportet. We ought to be favoured, not deceived, by a benefit.

Ad largum. At large; as title at large; assize at large; verdict at large; to vouch at large.

Ad libitum. At will, or pleasure.

Ad litem. For the suit; e. g., guardian *ad litem*, a guardian appointed by the Court to defend a suit on behalf of an infant. See *Administratio ad* ...

Ad literaturam ponere. To put children to school. This liberty was anciently denied to parents who were servile tenants, without the lord's consent, lest the sons being bred to letters, might enter into holy orders, and so stop the services which they might otherwise do as heirs to their fathers.

Ad litis decisionem. To the decision of the cause.

Ad litis ordinationem. To the bringing of a cause to the hearing.

Ad longum. At length.

Ad melius inquirendum. A writ directed to a coroner commanding him to hold a second inquest on the ground of fraud, rejection of evidence, irregularity of proceedings, &c.

Admensuratio. Writ of admeasurement brought for remedy against such persons who usurped more than their share. It lay

in the two following cases:—*Admensuratio dotis*, admeasurement of dower, where a man's widow, after his decease, held from the heir more land, &c., as dower than rightly belonged to her; *Admensuratio pastura*, admeasurement of pasture, which lay between those that had common of pasture where any one or more of them surcharged the common.

Adminiculum. An aid or support to something else, whether a right or evidence of one. It is principally used to designate evidence adduced in aid or support of other evidence, which without it is imperfect.

Administratio ad colligenda bona. Administration to collect the goods; granted where the estate is of a perishable or precarious nature, and regular probate or administration cannot be granted at once. See Prob. and Admin. Act V of 1881, s. 40.

Administratio ad litem. Administration to carry on an action. See Prob. and Admin. Act V of 1881, ss. 38 and 39.

Administratio caterorum. Administration granted to the residue of an estate, after a limited power of administration, already given, has been exhausted. See Prob. and Admin. Act V of 1881, s. 47.

Administratio cum testamento annexo. Administration with the will annexed, i. e., where there is not any executor named in the will, or, if he be named, he is incapable or refuses to act. See Prob. and Admin. Act V of 1881, s. 36.

Administratio de bonis non. Administration granted when the first administrator dies or seeks to be relieved before he has fully administered. See *Narasimma v. Goham Hussain Saib* (16 Mad. 71), and Prob. and Admin. Act V 1881, s. 45.

Administratio durante absentia. Administration granted where the sole executor is beyond sea or out of the realm. See Prob. and Admin. Act V of 1881, ss. 28 to 30.

Administratio durante minori etate. Administration granted where the sole executor is a minor. See Prob. and Admin. Act V of 1881, ss. 31 and 32.

Administratio pendente lite. Administration granted during a litigation, i. e., where a suit is commenced in the Probate court concerning the validity of a will or the right to administration, until the suit be determined. See Prob. and Admin. Act V of 1881, s. 34.

Admittendo clerico. A writ of execution upon a right of presentation to a benefice being recovered in *quare impedit*, addressed to the bishop or his metropolitan, requiring him to *admit* and institute the clerk or presentee of the plaintiff.

Admittendo in socium. A writ for associating certain persons, as knights and other gentlemen of the county, to justices of assize on the circuit.

Admonitio trina. A triple or three-fold warning given, in old times, to a prisoner standing mute, before he was subjected to the *peine forte et dure*.

Ad nocumentum liberi tenementi sui. To the injury of his frank-tenement or freehold.

Ad officium justificariorum spectat, unicuique coram eis placitanti justitiam exhibere. It is the duty of justices to administer justice to every one pleading before them.

Adoptio. The taking of one in the place of a child; adoption. See *Arrogatio*.

Ad ostium ecclesie. At the door of the church. One of the five species of dower formerly recognized. Now obsolete.

Ad pacem conservandam. For the preservation of the peace.

Ad pacem redire. See *Pax regis*.

Ad patriam. To the country. See *Patria*.

Ad prosequendum. For the purpose of prosecuting.

Ad proximum antecedens fiat relatio, nisi impediatur sententia. Relative words (as *he, who, such, said, &c.*) refer to the next antecedent, unless by such construction the meaning of the sentence would be impaired.

Ad quæstiones facti non respondent iudices; ad quæstiones legis non respondent juratores. Judges do not answer questions of fact; juries do not answer questions of law.

It is the office of the judge to instruct the jury in points of law—of the jury to decide on matters of fact. The object in view on the trial of a cause is to find out, by due examination, the truth of the points in issue between the parties, in order that judgment may thereupon be given, and the facts of the case must therefore be ascertained, for *ex facto jus oritur*, and it is the province of the jury to decide all questions of fact, to weigh the evidence as to the truth or falsity of the evidence, and to judge of the intention (*Queen v. Rookni Kani Mozoomdar*, 3 W. R. Cr. 58).

As to the questions which fall within the province of the judge or the jury, see ss. 298 and 299 of the Crim. Pro. Code V of 1898. In India, trial by jury does not obtain in civil cases; so Indian Judges are judges of law as well as of fact.

Ad quæstiones legis respondent iudices. Judges answer to questions of law.

Ad quem. To whom.

Ad quod damnum. To what damage. A writ which at common law ought to be issued before the crown grants certain liberties, as a fair market, or such like, which may be prejudicial to others. It was also issued whenever it was proposed to alter the course of a common high way, for the purpose of inquiring whether the change might in any way be prejudicial to the public. It was also used to inquire of lands given in mortmain

to any house of religion, &c. All these are now obsolete.

Ad rationem ponere. To put or call one to account. To arrain a prisoner, *i. e.*, to call him to the bar of the Court to answer the matter charged against him in an indictment.

Ad rationes stare. To plead.

Ad recte docendum oportet primum inquirere nomina, quia rerum cognitio a nominibus rerum dependet. In order rightly to teach a thing inquire first into the names; for a knowledge of things depends upon their names.

Ad rectum habere malefactorem. To have the malefactor forth coming, so that he may be charged and put to his trial.

Ad referendum. To be left for future consideration, or to be further considered. The phrase is used to express slowness in deliberation, and a want of promptitude in decision.

Ad rem. To the thing or purpose. The arguments were not *ad rem, i. e.*, they were not to the purpose.

Ad remanentiam. An estate *ad remanentiam* is an estate in fee simple.

Ad requisitionem. At the request or desire of.

Ad respondendum. To answer.

Ad satisfaciendum. To satisfy.

Adscripti vel adscriptii gleba. A kind of slaves, among the Romans, attached to and transferred along with the land which they cultivated.

Ad sectam. At the suit of. Used generally in its abbreviated forms *ads.* and *ats.* to designate the title of an action when the defendant's name is placed first. Thus the suit *Brown v. Smith* may also be described, *Smith ats. Brown*.

Ad subjiendum. To submit or answer.

Ad terminum qui preterit. For a term which has passed by. A writ of entry which lay for a lessor or his heirs, where a lease of premises had been made for life or years, and after the term had expired the premises were withheld from the lessor or his heirs, by the tenant or other person in possession of them.

Ad testificandum. To give evidence. See *Subpœna ad....*

Ad tunc et ibidem. Then and there.

Adulterium. Adultery; alutation; a fine imposed for the commission of adultery.

Ad valorem. According to the value. A term used in speaking of the duties or customs paid on certain goods; the duties on some articles are paid by the number, weight, measure, tale, &c., and those on others are paid *ad valorem*—that is, according to their value. The term is used also of stamp-duties, which in many cases, are payable according to the value of the subject matter of the particular instrument or writing.

Ad veniendum coram iudiciariis ad compotum suum reddendum. To come before the Court of the judges to render one's account.

Ad ventrem inspiciendum. To inspect the womb. A writ issued where a widow is suspected to feign herself with child in order to produce a supposititious heir to an estate, to examine whether she be with child or not; also where a woman capitally convicted pleads in stay of execution that she is quick with child.

Adversaria. A note-book; journal; rough memoranda; common place books.

Ad vitam aut culpam. For life or delinquency. An office which is to determine only by the death or delinquency of the holder. See *Quamdiu bene... Dum bene...*

Advocati. Patrons of churches; advocates; officers. Hence an assembly of *advocati*, i.e., the bar.

Advocatus. The quality, function, privilege or territorial jurisdiction of an advocate.

Advocati fisci. Officers who attend to the interests of the *fiscus* or the imperial treasury; advocates of the revenue among the Romans.

Advocatio. Summoning; legal assistance. Also the right of presentation to a church or benefice.

Advocatio medietatis ecclesie. Advowson of the moiety of the church.

Advocatio decimarum. A writ which lay for tithes, demanding the fourth part or upwards, that belonged to any church.

Advocatus. An advocate; attorney; patron of a church.

Advocatus diaboli. An advocate who argues against the canonization of a saint.

Advocatus gest, ad quem pertinet ius advocacionis alicujus ecclesie, ut ad ecclesiam, nomine proprio, non alieno possit presentare. A patron is he to whom appertains the right of presentation to a church in such a manner that he may present to such a church in his own name, and not in the name of another.

Æbere morth. A detected homicide.

Æbere theof. A detected or convicted thief.

Ædificare in tuo proprio solo non licet quod alteri noceat. It is not permitted to build upon one's own land that which may be injurious to another. See *Sic utere tuo...*

Ædificatum solo, solo cedit. Whatever is built on the soil goes with the soil. See *Quicquid inædificatur...*

Æquitas agit in personam. Equity operates upon the conscience.

This is a maxim which is descriptive of the procedure in a court of equity; and it is not otherwise a maxim of principle of equity itself. The maxim is one of very great importance. In the case of *Penn. v. Lord Baltimore* (1 Ves. 444; 2 W. & T. L. C., 5th Edn., 837) which was a suit regarding land in the United States (*sci.*, beyond the juris-

diction of the English Court of Chancery) Lord Chancellor Hardwick stated, in effect, as follows:—"The strict primary decree in this court, as a court of equity, is *in personam*; and although this court cannot (in the case of lands situate without the jurisdiction of the court) issue execution *in rem*, *c. g.*, by elegit, still I can enforce the judgment of the court (which is *in personam*) by process *in personam*, *c. g.*, by attachment of the person when the person is within the jurisdiction, or by sequestration of the goods or lands of the defendant when these are within the jurisdiction of the court, until the defendant do comply with the order or judgment of the court, which is against himself the defendant personally, to do, or cause to be done, or to abstain from doing, some act." And agreeably with the judgment of Lord Hardwick in that case the court is in the habit of entertaining actions and of giving judgment therein for an account of rents and profits; and for specific performance, and for an injunction (*Ex parte Pollard*, 1 Mont. & Ch. 239; *Mercantile Investment Co. v. River Plate Co.*, 1892, 2 Ch. D. 303); and for the foreclosure of mortgages (*Toller v. Carteret*, 2 Vern. 494; *Payet v. Ede*, L. R. 18 Eq. 118; *Colyer v. Finch*, 5 H. L. Ca. 905), and for the execution of conveyances, &c., regarding lands situate abroad, and whether within the Queen's dominions or not. But if the very title itself to the lands is in question (*In re Hanthorne*, *Grahame v. Massey*, 23 Ch. D. 743; *De Sousa v. British South Africa Co.*, 1892, 2 Q. B. 358), the court will not assert its jurisdiction, for that is a question exclusively appropriate for the law of the country in which the property is situate (*sci.*, the *lex loci rei sitæ*).

An inhabitant of Baroda, who carries on the business of a banker at Bombay by a *mumim*, and has a place of business there, is constructively an inhabitant of Bombay and as such is subject to the orders and process of the High Court in the exercise of its equity jurisdiction. A person appearing to discharge a rule thereby waives all objections to the formality of the service of the rule upon him. The High Court will assert its jurisdiction for the purpose of preventing a writ of sequestration issued by it from becoming a mere form, and under proper circumstances will operate *in personam* where the property sought to be sequestered is outside its jurisdiction (*Harivallabhdas Kalkindas v. Utamchand Manickchand*, 8 Bom. H. C., O. C., 286).

Æquitas est correctio legis generaliter lata, quâ parte deficit. Equity is a correction of law, when too general, in the part in which it is defective.

Æquitas est correctio quedam legi adhibita, quâ ab ea abest aliquid propter generalitatem exceptionem comprehensionem. Equity is a certain correction applied to law, because on account of its general comprehensiveness, without an exception, something is absent from it.

Æquitas est perfecta quadam ratio quæa jus scriptum interpretatur et emendat; nulla scriptura comprehensa; sed sola ratione consistens. Equity is a sort of perfect reason, which interprets and amends written law; comprehended in no code; but consistent with reason alone.

Æquitas est quasi equalitas. Equity is, as it were, equality.

Equity in its most general sense is that equality in the transactions of mankind which accords with natural justice,—that is to say, with honesty and right—and which is popularly said to arise *ex æquo et bono*; but in its juridical sense,—that is to say, as administered in the courts,—equity embraces a jurisdiction much less wide than the principles of natural justice,—there being many matters of natural justice which the courts leave wholly unprovided for, partly from the difficulty of framing any general rules to meet them, and partly from the doubtful policy of attempting to give a legal sanction to duties of imperfect obligation.

The maxim is perhaps nowhere so clearly illustrated as in the case of joint purchasers and joint mortgagees. For although if two persons advance and pay the purchase-money of an estate in *equal* portions and take a conveyance to them and their heirs, that is a joint tenancy at law, and the survivor will in such a case at law and also in *equity* take the whole estate; yet wherever circumstances occur which a court of equity can lay hold of to prevent the incident of survivorship, the court will readily do so; for joint tenancy is not favoured in equity. Thus in *Lake v. Gibson* (1 W. and T. L. C., 5th Edn., 198) it was laid down that where two or more *purchase* lands, and advance the purchase-money in *unequal* shares, and this appears on the deed itself, the mere circumstance of the inequality in the sums respectively advanced makes them in the nature of partners; and however the legal estate may survive, yet the survivor will in equity be considered as a trustee for the other in proportion to his own original share. So again if two persons advance a sum of money, whether in *equal* or in *unequal* shares, by way of *mortgage*, and take the mortgage to them jointly, and one of them dies, the survivor shall not in equity have the whole money due on the mortgage, but the representative of the deceased mortgagee shall have his proportion as a trust, for the mere circumstance that the transaction is a *loan* is considered by the court to repel the presumption of an intention to hold the mortgage as a joint-tenancy (*Rigden v. Vallier*, 2 Ves. Sr. 258; *Morley v. Bird*, 3 Ves. 361; *In re Jackson, Smith v. Sibthorpe*, 34 Ch. D. 732). Also, even in the case of a purchase, enuring both at law and in equity as a joint purchase, equity will treat a mere covenant to alien as a severance of the jointure (*Hewet v. Hallet*, 1894, 1 Ch. D. 362) and so will exclude the legal incident of survivorship.

Æquitas factum habet quod fieri oportuit. Equity considers that to have been done which ought to have been done, *i. e.*, imputes an intention of performing an obligation where an act has been done which can be attributed to such an intention.

The true meaning of this maxim is that equity will treat the subject-matter of a contract, as to its consequences and incidents, in the same manner as if the act contemplated in the contract of the parties had been completely executed. But equity will not thus act in favour of all persons *e. g.* not in favour of volunteers (*Jefferys v. Jefferys*, Cr. and Phil. 138; *Chetwynd v. Morgan*, 31 Ch. D. 596) but only in favour of a limited class of persons, chiefly purchasers for value, including lessees and mortgagees, whom equity regards with considerable affection. Thus all agreements are considered as performed which are made for a *valuable* consideration, in favor of persons entitled to insist upon their performance; and they are, in fact, considered as done at the time when, according to the tenor of the contract, they ought to have been done; and for most purposes they are deemed (as from that time) to have the same consequences attached to them as if they were completely executed (*Walsh v. Lonsdale*, 21 Ch. D. 9; *Swain v. Ayres*, 21 Q. B. D. 289; *Foster v. Reeves*, 1892, 2 Q. B. 255). And so also money by deed covenanted or by will directed to be laid out in land, is treated as already land in equity from the moment that the deed and will respectively take effect, and conversely where land is by agreement contracted, or by will directed, to be sold, it is considered and treated as money, this being *conversion* in equity.

Æquitas nunquam contravenit legis. Equity never counteracts the laws.

Æquitas sequitur legem. Equity follows the law.

In construing words of limitation of estates, in applying the rules of descent, and in applying the statutes for the limitation of actions and suits, equity follows the rules of law.

As regards legal estates, rights and interests, equity was and is strictly bound by the rules of law, and had and has no discretion do deviate from them. As regards equitable estates, rights and interests, equity, although not strictly speaking bound by the rules of law, yet acted and acts in analogy to those rules, wherever an analogy exists. As regards legal estates, it is well settled that equity follows the law in applying, *e. g.*, all canons of descent, and in particular the rule of primogeniture, although that rule may, in particular instances be productive of the greatest hardship towards the younger members of the family. But while recognizing the rule of law, a court of equity will in a proper case, get round about, avoid or obviate it. For example, if

the eldest son should prevent his father from executing a proposed will devising an estate to his younger brother, by promising to convey that estate to the younger brother, and the estate accordingly descends in law to the eldest son, as a consequence flowing from the promise, a court of equity would, in such a case regard the elder brother as a trustee of the property for the younger brother, who is equitably entitled to it. Accordingly, in *Loffus v. Mau* (3 Giff. 592), where a testator in advanced years and in ill health induced the plaintiff, his niece, to reside with him as his house keeper, on the verbal representation that he had left her certain property by his will, which in fact he had prepared and executed, but subsequently by a codicil revoked—the court directed that the trusts of the will in favour of the niece should be performed, and held that, in cases of this kind a representation that property is given, even though by a revocable instrument, is binding where the person to whom the representation is made has acted upon the faith of it to his or her detriment.

As regards equitable estates, in construing the words of limitation of trust estates in deeds and wills, at least where the trust estate is executed, a court of equity follows all the rules of law for the construction of the words of limitation of legal estates. But where the trust estate is executory only, and the court sees an intention to exclude the rules of law in the construction of the words of limitation, then the court carries out the intention in analogy to the rules of law, but not in servile obedience to them, where such obedience would defeat the execution of the intention. See *Cypres*.

Æquum et bonum est lex legum. That which is equal and good is the Law of Laws.

Æstimatio capitis. Price or estimation of a head. Fines paid for the offences committed against persons according to their degree and quality, by estimation of their heads, ordained by king Athelstane. Also called *pretium hominis*.

Æstimatio praterite delicti ex postremo facto nunquam crescit. The weight of a past offence is never increased by a subsequent fact.

Ætas infantie proxima. The age next to infancy; from 7 to 10½ years.

Ætas pubertati proxima. The age next to puberty, from 10½ to 14 years.

Ætate probandu. A writ which inquired whether the king's tenant holding in chief by chivalry, was of full age to receive his lands. Now obsolete.

A facto ad jus non datur consequentia. The inference from the fact to the law is not allowed. A general law is not to be trammelled by a specific or particular precedent.

Affectio tua nomen imponit operi tuo. The affection of a person gives a name to his work.

Affectus punitur licet non sequatur effectus. The intention is punished although the consequence do not follow. See *Actus non facit... Voluntas in delictis... Voluntas reputatur...*

Affeerors. Assessors or moderators of fines and amercements.

Affidatio. A swearing of the oath of fidelity or of fealty to one's lord under whose protection the quasi-vassal has voluntarily come.

Affidatio dominorum. An oath taken by the lords in parliament.

Affidatus. A tenant by fealty; a retainer.

Affinitas affinitatis. The connection which has neither consanguinity or affinity, as the connection between a husband's brother and his wife's sister.

Affinitas dicitur, cum duæ cognationes, inter se divisæ, per nuptias copulantur et altera ad alterius fines accedit. It is called affinity when two families, divided from one another, are united through marriage, and either approaches the confines of the other.

Affirmanti, non neganti, incumbit probatio. The burden of proof rests with him who affirms, and not with him who denies a fact.

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist (*Ind. Evi. Act I of 1872, s. 101*). The plaintiff is bound in the first instance to show at least a *prima facie* case, and if he leaves it imperfect, the court will not assist him, *actori non probante, absolvitur reus*. The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is otherwise provided by law (*Ibid.*, s. 103), for it is difficult to prove a negative assertion, and the law will not force a man to show a thing which by intendment of law lies not within his knowledge. See *Lex neminem cogit ostendere...* Generally, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side (*Ibid.*, s. 102).

In a suit on a bond it is for the plaintiff to prove the amount of the debt, and this will be done sufficiently in the first instance by proof of the execution of the bond. It is for the defendant to prove in answer, if he can, that such amount is less than the sum sued for (*Sivaramaiyur v. Sami Aiyar*, 1 Mad. H. C. R. 447).

Affirmativum negativum implicat. An affirmative implies a negative.

Afforare. To set a value or price on anything; to affeer.

Afforatus. Appraised or valued, as things vendible in a fair or market.

A fortiori. By so much stronger reason; on the strongest side; much more therefore.

Agard. (Fr.) Award. See *Nul tiel...*

Agentes et consentientes pari poena plectantur. The agents and abettors shall be subject to the same punishment. Acting and consenting parties are liable to the same punishment. See the Ind. P. C. XLV of 1860, ss. 109 and 114.

Agere actum. To labour in vain.

Aggregatio mentium. The consent or joining together of two minds; an agreement.

Agillarius. A keeper of cattle.

Agitatio animalium on forestâ. Drift of the forest; a view or examination of what cattle are in a forest, chase, &c., that it may be known whether it be surcharged or not; and whose the beasts are, and whether they are commonable.

Agnati. Kindred by the father's side.

Agaricæ leges. Laws relating to the division of public lands among the poorer citizens.

Agraria lex. The Agrarian law.

Agrarius. Relating to land.

Agraticum. A revenue from land; a land-tax.

Agri. Arable lands in common fields.

Agri ab universis per vices occupantur; arva per annos mutant. Fields are held by all occupiers in turns; tilled lands change by years.

Agricoltura. Agriculture.

Agri limitati. Lands belonging to the state by right of conquest, and granted or sold in plots.

Agri rectigales. In Roman Law a perpetual right of enjoying land subject to the payment of rent. See *Emphyteusis*.

Aiel. Aile. Ayle. A writ which lay when a man's grandfather, or great-grandfather (called *besaile*) died seized of lands in fee simple, and on the day of his death the heir was dispossessed of his inheritance by a stranger. See *Mort d'ancestor*.

Aile ecclesiæ. The wings or side aisles of a church.

A latere. By the side; in attendance.

Alba firma. White rents. Rents payable in white or silver money were called white-rents or blanch farms, *reditus-albi*, in contradistinction to rents reserved in work, grain, &c., which were called *reditus-nigri*, black-mail.

Albinatus jus. The right, whereby the king, at an alien's death, was entitled to all his property, unless he had peculiar exemption. Now abolished.

Alcământa. A liberty of passage, open way, or watercourse, &c., for the tenant's accommodation.

A lectionibus jurisprudentium. From the readings of learned men of law.

A lege nature. From the law of nature.

A lege sua dignitatis. By right of his dignity.

Alia enormia. Other wrongs. A declaration in trespass sometimes concluded thus:—"and other wrongs to the plaintiff then

did," &c. This was technically called an allegation of *alia enormia*.

Alias. Else. Otherwise. A second or further writ, which was issued after a first writ had expired without effect.

Alias dictus. Otherwise called or named. This is the manner of description of a defendant when sued on any speciality, as a bond, &c., where, after his name and common addition, comes the *alias dictus*, describing him again by the very name and addition whereby he is bound in the writing.

Alibi. Elsewhere. When an accused person, in order to show that he could not have committed the offence with which he is charged, sets up as his defence that he was elsewhere at the time when the crime is alleged to have been committed, this defence is called an *alibi*.

Alibi natus. Born in another place.

Alienatio, i. e., alienum facere; vel, ex nostro dominio in alienum transferre; sive rem aliquam in dominium alterius transferre. Alienation, *i. e.*, to make alien, or to transfer from one ownership to that of another, or to transfer anything into the power of another.

Alienatio in fraudum creditorum facta. An alienation made in fraud of creditors. See *Ex dolo malo*...

Alienatio licet prohibeatur, consensu tamen omnium, in quorum favorem prohibita est, potest fieri; et quilibet potest renunciare juri pro se introducto. Although alienation be prohibited, yet by the consent of all in whose favour it is prohibited, it may take place; for it is in the power of any man to renounce a right in his favour.

Alienatio rei præfertur juri accrescendi. Alienation is favoured by the law rather than accumulation.

It is the well known policy of our law to favour alienation, and to discountenance every attempt to tie up property unreasonably, or, in other words, to create a perpetuity. Under the feudal system the power of alienating real property was restricted, for all the land within the king's territories was held to be derived, either mediately or immediately, from him as the supreme lord and was subjected to the burdens and restrictions incident to the feudal tenure. The system did not prevent the right of sub-infeudation, whereby a new and inferior feud was carved out of that originally created. These restrictions against alienation were subsequently relaxed by various statutes from time to time. At common law the *potestas alienandi*, the power of alienation is a right necessarily incident to an estate in fee-simple. It is inseparably annexed to it and cannot, in general, be indefinitely restrained by any proviso or condition whatsoever. If a man makes a feoffment on condition that the feoffee shall not

alien to any, the condition is void; because where a man is enfeoffed of land or tenements he has power to alien them to any person by the law; for, if such condition should be good, then the condition would oust him of the whole power which the law gives him, which would be against reason and therefore such condition is void.

In putting restraints upon alienation care should be taken that the property be not tied up beyond a reasonable time, and the rule is, accordingly, well established, that, although an estate may be rendered inalienable during the existence of a life or any number of lives in being, and twenty-one years after, or, possibly, even for nine months beyond the twenty-one years, in case the person ultimately entitled to the estate should, at the time of its accruing to him, be an infant *in ventre sa mère*, yet all attempts to postpone the enjoyment of the fee for a longer period are void. This rule against restrictions on alienations is also adopted in the Transfer of Property Act IV of 1882, ss. 10 to 14.

Where a will grants property absolutely and contains a direction against alienation, the legatee is entitled to receive the property as if the will had contained no such direction (*Lal Ramjewan Lal v. Dal Koor*, 24 Cal. 406; *Ind. Suc. Act X of 1865*, s. 125).

So also, it was held that Government, having absolutely granted a property, cannot clog the ownership with a prohibition against alienation (*Pandurang Sadashiv v. Gorind Jeang*, 1 Bom. L. R. 498).

Of course, a transfer in perpetuity is allowed for the benefit of the public in advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind (*Trans. of Pro. Act IV of 1882*, s. 17). See also s. 101 of the *Ind. Suc. Act X of 1865*.

The grounds of the rule against perpetuities are applicable to the property of Hindus, and the court will be very reluctant to construe a Hindu will so as to tie up property for an indefinite period (*Arumugam Mudali v. Ammi Ammal*, 1 Mad. H. C. R. 400). Perpetuities, save in cases of religious and charitable endowments, are not sanctioned by Hindu Law (*Kumara Asima Krishna Deb v. Kumara Krishna Deb*, 2 B. L. R., O. C., 11). An instrument which did not constitute a valid *wakf* was held void as contravening the rule against perpetuities (*Kaloolia Sahib v. Naseerudeen Sahib*, 18 Mad. 201). But if there is a valid dedication of premises for religious purposes, this is not invalid merely because it transgresses against the rule forbidding the creation of perpetuities (*Bhuggobutty Prosonno Sen v. Goo-roo Prosonno Sen*, 25 Cal. 112).

This maxim will not enable a person to alienate property, when he has no such power of alienation, e.g., the power of Hindu coparceners and widows to alienate property

will be governed by the Hindu Law, and the power of the holders of inam, vatan, zamindari and other properties granted by Government, will be governed by the law applicable to such grants. The Mohomedan law makes no distinction between ancestral and self-acquired property, and puts no restriction on the power of a Mohomedan to alienate property, whether ancestral or self-acquired. But he cannot will away his property to a larger extent than one-third of his estate without the consent of his heirs, nor can he make a legacy to one of his heirs without the consent of the rest.

Alienigena est alienus gentis seu alienus ligantie qui etiam dicitur peregrinus, alienus, exoticus, extraneus, &c. An alien is of another nation or another allegiance, who is also called a stranger, foreigner, &c.

Alieni juris. Under another's right or authority. See *Sui juris*. An expression applicable to those who are in the keeping or subject to the authority of another, and have not full control of their person and property, such as infants (*i. e.*, minors), married women, and lunatics.

Alieno solo. In another man's land.

Alii per alium non acquiritur obligatio. One man cannot incur a liability through another (unless the latter is his agent).

Alimentorum appellatione venit victus, vestitus, et habitatio. Under the expression of *aliments* come food, clothes and lodging.

Alimonia. Alimony.

1 l'impossible nul n'est tenu. There is not any obligation to the impossible.

Alio intuitu. With a collateral motive, a motive other than the proper and professed one, *i. e.*, when a man brings an action by way of advertising his goods or his character.

Alio modo. Otherwise.

Aliquid conceditur ne injuria remaneat impunita, quod alias non concederetur. Something is conceded, which otherwise would not be conceded, lest an injury should remain unpunished.

Aliquis non debet esse judex in propria causa, quia non potest esse judex et pars. A man ought not to be a judge in his own cause, for he cannot be at once a judge and a party. See *Nemo debet esse...*

Aliquo modo destruat. That he be in any manner destroyed.

Aliter. Otherwise.

Aliter puniuntur ex isdem factionibus sceleris, quam liberi; et aliter qui quidem aliquid in dominum, parentemve commiserit, quam in extraneum; in magistrum, quam in privatum. Slaves and free men are punished differently for the same offences; he who has committed an offence against a master or parent is punished otherwise than if he had committed it against a stranger; against a Magistrate than if against a private person.

Aliud actum aliud simulatum. The pretence was different from the reality.

Aliud est celare, aliud tacere. To conceal is one thing, to be silent another. The active concealment of a fact by one having knowledge or belief of the fact, with intent to deceive another, amounts to fraud. But mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech (*Ind. Con. Act IX of 1872, s. 17*). See *Ea quæ commendandi*....

Aliud est facere, aliud perficere. It is one thing to do, another to complete.

Aliud est possidere, aliud esse in possessione. It is one thing to possess, and another thing to be in possession.

Aliud est tacere, aliud celare. It is one thing to be silent, another thing to conceal. See *Aliud est celare*....

Aliud et idem. One and the same thing, though under different aspects.

Aliunde. From some other place or person; from elsewhere; *e. g.*, proof *aliunde*. Thus if when a case is not made out in the method anticipated it may be proved *aliunde*, that is, by other and different evidence.

Allegans contraria non est audiendus.

He is not to be heard who alleges things contradictory to each other.

In other words, a man shall not be permitted to "blow hot and cold" with reference to the same transaction, or insist, at different times, on the truth of each of two conflicting allegations, according to the promptings of his private interest. If facts once solemnly affirmed were to be again denied whenever the affirmant saw his opportunity, there would be no end of litigation and confusion.

The doctrine of *estoppel*, at any rate by deed and *in pais*, is in great measure a development of the principle expressed in this maxim. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true, and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing (*Ind. Evi. Act I of 1872, s. 115*). Accordingly, a tenant, during the continuance of the tenancy is debarred from denying that his landlord had, at the beginning of the tenancy, a title to the property, which is the subject of the tenancy (*Ibid.*, s. 116; *Vasudev Daji v. Babaji Ramu*, 8 Bom. H. C., A. C., 175); nor shall a drawee of a bill of exchange, after he has accepted it, be permitted to deny that the drawer had authority to draw such bill; nor a bailee or licensee to deny that his bailor or licensor had at the time when the bailment or

license commenced, authority to make such bailment or grant such license (*Ibid.*, s. 117).

Where a seller has recognized the right of his buyer to dispose of goods remaining in the actual possession of the seller, he cannot defeat the right of a person claiming under the buyer on the ground that no property passed to the buyer by reason of the want of a specific appropriation of the goods (*Woodley v. Coventry*, 2 H. & C. 164). Nor can an individual who has procured an act to be done sue as one of several co-plaintiffs for the doing of that very act (*Brandon v. Scott*, 7 E. & B. 234). And a licensee of a patent cannot in any way question its validity during the continuance of the license (*Clark v. Adie*, 2 App. Cas. 423; 46 L. J. Ch. 585). A person cannot act under an agreement and at the same time repudiate it (*Crossley v. Dixon*, 10 H. L. Cas. 293). A person who has by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as a partner in such firm; and it would be unjust to enable him to turn round and say that he did not fill that situation and that the representation was incorrect (*Ness v. Angas*, 3 Exch. 813; *Ind. Con. Act IX of 1872, s. 245*). So a person cannot in the same transaction buy in the character of principal and at the same time charge the seller for commission as his agent (*Salomons v. Pender*, 3 H. & C. 639). And a person acting professedly as agent for another, may be estopped from saying that he was not such agent (*Rogers v. Hadley*, 2 H. & C. 227). In like manner the maxim applies to prevent the assertion of titles inconsistent with each other and which cannot contemporaneously take effect.

Further, if a stranger begins to build on land, supposing it to be his own, and the real owner, perceiving his mistake, abstains from setting him right, and leaves him to persevere in his error, a court of equity will not afterwards assist the real owner asserting his title to the land (*Ramsden v. Dyson*, L. R. 1 H. L. 129). See *Quicquid plantatur*...

For Indian cases on this last subject, see *Mussamat Rani Rama v. Sheikh Jan Mohamed* (3 B. L. R., A. C., 18); *Sufdur Ali Khan v. Joy Narain Singh* (16 W. R. 162); *Thakoor Chunder Parmanick v. Ramdhona Bhuttacharjee* (6 W. R. 228; B. L. R., Sup. Vol., p. 595); *Sevaklal v. Ora Nizamuddin*, 8 Bom. H. C., O. C., 77; and *Premji Jivan Bhat v. Haji Cassum Jumma Ahmed* (20 Bom. 198). See also Act XI of 1855, s. 2.

Lastly, where a witness makes contradictory statements relative to the same transaction, this maxim will apply in determining the degree of credibility to which he may be entitled.

Allegans suam turpitudinem non est audiendus. He is not to be heard who alleges his own turpitude or infamy. See *Nemo allegans*...

Allegari non debuit quod probatum non relevat

That which, if proved, would not be relevant, ought not to be alleged.

Allegata et probata. The pleadings (allegations) and the proof. Assertions and facts. See *Judicis est judicare...*

Allegatio. An alleging or adducing by way of proof; an excuse.

Allegatum. Pleaded.

Allegiare. To defend or justify by due course of law.

Alter (or aler) sans jour. To go without day. To be finally dismissed the court because there is no day of further appearance assigned. See *Eat inde...*

Allocacione facienda. A writ allowing to an accountant such sums of money as he has fully expended in his office; it is addressed to the Lord Treasurer and the Barons of the Exchequer

Allocato comitatu. A second writ of *exigent* allowed on the former not being fully served and complied with. See *Exigent*.

Allocatur. It is allowed. The certificate of the allowance of costs by the master on taxation.

Allocatur exigent. A writ which is issued when an outlaw has not been exacted five times under the *exigi facias* in order to complete the number of exactions.

Allocutus. The demand made of a prisoner, after verdict of guilty found against him, whether he has any reason to give why sentence should not be passed.

Allodarii. Tenants holding land on *allodial* tenure, *i. e.*, not under any lord or superior. Sing. *Allodarius.* All land in England is held, in theory, of the Crown, and cannot therefore be allodial.

Allodium. *Allodium.* Property held in absolute dominion and which does not lie in tenure.

Alluvio. Land imperceptibly gained from the sea or the river by the washing up of sand and soil, so as to form *terra firma*. See *Quod per alluvionem...*

Alta proditio. High treason; now simply called treason.

Alteratio. Alteration; the changing of a thing.

Alterius circumventio alii non prabet actionem. The fraud of one man gives no right of action to another.

Alternativa petitio non est audienda. An alternative petition or prayer is not to be heard.

Alterum non ledere. Not to injure another.

Altius non tollendi. A servitude due by the owner of a house by which he is restrained from building beyond a certain height.

Altius tollendi. The right to raise the height of one's house to any extent one may think proper. Generally, however, every one enjoys this privilege, unless he is restrained by some contrary title.

Alto et basso. High and low; an absolute submission of all differences, small and great, high and low, to arbitration (*ponere se in arbitrio in alto et basso*).

Altum mare. The high sea.

Alumnus. A child which one has nursed; a foster-child; a disciple; one educated at a college or seminary is called an *alumnus* thereof.

A majore ad minus. From the greater to the less.

Amanuensis. A clerk; a secretary; one who writes on behalf of another that which he dictates.

A matre. From, or by, the mother.

Ambactus. A vassal; a dependent upon a lord; a servant or client.

Ambigua responsio contra proferentem est accipienda. An ambiguous reply is to be construed against him who makes it.

Ambiguis casibus semper presumitur pro rege. In doubtful cases the presumption is always in favour of the king.

Ambiguitas latens. Latent ambiguity.

Ambiguitas patens. Patent ambiguity.

Ambiguitas verborum latens verificatione suppletur; nam quod ex facto oritur ambiguum verificatione facti tollitur. Latent or hidden ambiguity of the words may be supplied by evidence; for whatever ambiguity arises from an extrinsic fact, may be removed by extrinsic evidence.

Ambiguitas verborum patens nulla verificatione excluditur. A patent ambiguity cannot be cleared up by extrinsic evidence.

Two kinds of ambiguity occur in written instruments; the one is called *ambiguitas latens* (latent ambiguity), *i. e.*, where the writing appears on the face of it certain and free from ambiguity but the ambiguity is introduced by evidence of something extrinsic or by some collateral matter outside the instrument; the other species is called *ambiguitas patens* (patent ambiguity), *i. e.*, an ambiguity apparent on the face of the instrument itself.

In the case of a latent ambiguity, where the words of the instrument, *e. g.*, a will, are unambiguous but it is found by extrinsic evidence that they admit of applications one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended. For example, a man having two cousins of the name of Mary bequeaths a sum of money to "his cousin Mary." It appears that there are two cousins each answering the description in the will. Evidence is admissible to show which of the two cousins was intended. Again, A by his will leaves to B "his estate called Sultanpur Khurd." It turns out that he had two estates called Sultanpur Khurd.

Evidence is admissible to show which estate was intended (*Ind. Suc. Act X of 1865, s. 67*).

But in the case of a patent ambiguity, where the ambiguity or deficiency is on the face of the instrument, no extrinsic evidence as to the intentions of the party shall be admitted. For example, a man has an aunt Cornilia, and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths Rs. 1,000 to "his aunt Caroline," and Rs. 1000 to "his cousin Mary," and afterwards bequeaths Rs. 2,000 to "his beforementioned aunt Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his beforementioned aunt Mary." A bequeaths Rs. 1,000 to , leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert. A bequeaths to B rupees or "his estate of ." Evidence is not admissible to show what sum or what estate the testator intended to insert (*Ibid., s. 68*).

Thus, it will be seen that when the language used in a document is on its face ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects (*Ind. Evi. Act I of 1872, s. 93*). So also when language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts (*Ibid., s. 94*). But when language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense (*Ibid., s. 95*). See also ss. 92, 96 to 100 of the same Act.

See *Quoties in verbis...*

Ambiguum pactum contra venditorem interpretandum est. An ambiguous deed or contract is to be expounded against the seller or grantor. Thus, if a man has a warren in his land, and grants the same land for life, without mentioning the warren, the grantee will have it with the land.

Ambiguum placitum interpretari debet contra proferentem. An ambiguous plea ought to be interpreted against the party delivering it.

Ambulatoria est voluntas defuncti usque ad vitæ supremum exitum. The will of a deceased person is ambulatory until the latest moment of life. See *Voluntas testatoris...*

A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will (*Ind. Suc. Act. X of 1865, s. 49*).

Ambulatoria voluntas. An absolute power. A will or power that can be changed at pleasure.

A mensâ et thoro. From table and bed. A partial divorce by reason of adultery or cruelty by the husband or wife. It caused the separation of the husband and wife, but did not dissolve the marriage, so that neither of them could marry during the

life of the other. This is now effected by a decree of *judicial separation*. See *A vinculo....*

Amencia. Want of reason; stupidity; madness; insanity; idiocy.

Ami. Amy. A friend.

Amicus. A friend; patron; protector.

Amicus curiæ. A friend of the court. A member of the bar or other stander by, not being a party to or interested in the cause, who informs the court of any decided case or on a point of law, on which the court is doubtful or mistaken.

A minore ad majus. From the less to the greater.

Amita. A paternal aunt; the sister of one's father.

Amita magna. A great aunt.

Amittere legem terræ. To be put out of the protection of the law so far as relates to the suing in any of His Majesty's courts; to lose the liberty of swearing in court. Now obsolete.

Amittere liberam legem (or legem terræ). To lose the benefit of the law. To be deprived of the liberty of swearing in any court; as to become infamous, renders a person incapable of being an evidence. So a man that is outlawed, &c., is said to lose, *i. e.*, put out of the protection of, the law, at least so far as relates to the suing in any of His Majesty's Courts of justice, though he may be sued.

Amoveas manus. That you remove your hands. See *Quod manus.... Monstarans de droit*.

Ampliare justitiam. To amplify justice. See *Boni judicis est ampliare...*

Ampliatio. An ampliation; an enlargement a deferring of judgment till the case is further examined.

A multo fortiori. On much stronger grounds; with much stronger or greater reason. See *A fortiori*.

A nativitate. From the birth.

A naturâ et ordine naturæ. From nature or course of nature.

Incipitis usus. Of doubtful use. A phrase used especially with reference to the law of contraband, of articles of doubtful use, *i. e.*, which might be contraband or not according to circumstances.

Some articles are notoriously essentially contraband, *i. e.*, capable of being used in war only; others are in the opposite extreme and can never be used in war at all. Between these two extremities there are many articles said to be *incipitis usus, i. e.*, of variable application, usually in peace but not unfrequently in war, such as provisions, coals, naval stores, timber, tar, and the like.

Androgynus. A man-woman; a hermaphrodite.

Angaria. Service to a lord; villanage; personal service which tenants were obliged to pay to their lords.

Angliæ jura in omnia casu libertatis dant favorem. The laws of England, in all cases of liberty, are favourable.

Aniens (*Fr.*) Void; being of no force.

Aniente. Made void.

Animalia fera, si facta sint mansueta et ex consuetudine eunt et redeunt, volant et revolant, ut cervi, cygni, &c., eo usque nostra sunt, et ita intelliguntur quamdiu habuerint animum revertendi. Wild animals, if they be made tame, and are accustomed to go out and return, fly away and fly back, as stags, swans, &c., are considered to belong to us so long as they have the intention of returning to us.

Animalia fera natura. Animals of a wild nature; wild animals. See *Fera igitur...*

Animalia mansueta. Tame or domesticated animals.

Animo et corpore. With mind and body.

Animo et facto. Verily and indeed; really and truly.

Animus. Intention; will; purpose; desire.

Animus ad se omne jus ducit. Intention attracts all law to itself. In many important actions the law holds their efficacy to depend on the intention with which they are proved to have been performed. See *Actus non facit...*

Animus cancellandi. The intention of destroying or cancelling.

Animus clamandi. Intention of claiming or complaining.

Animus et factum. The intention and the deed. The combination of the intention with the actual fact, which is required for a change of domicile, and also for the efficacy of most other legal acts.

Animus ex qualitate facti præsumitur. The intent is presumed from the quality of the act. See *Acta exteriora...*

Animus furandi. The intention of stealing.

Animus homines est anima scripti. The intent of a man is the soul of his writing.

Animus manendi (or *morandi*). The intention of remaining, which is material for the purpose of ascertaining a person's domicile.

Animus non revertendi. The intention of not returning. Animals accustomed to go and return continue the property of their owner until they lose the *animus revertendi*; and they are said to lose that intention when they in fact cease for good to return.

Animus possidendi. The intention of possessing.

Animus quo. The intent with which.

Animus recipiendi. The intention of receiving.

Animus revertendi. The intention of returning.

Animus revocandi. The intention of revoking. Applied to a will.

Animus testandi. The intention of making a will.

An, jour, et waste. Year, day, and waste. See *Annus, dies...*

Annates. First fruits.

Anni nubiles. Marriageable years or age of a woman. This is 12 years.

Innoisance. A nuisance.

Annonæ civiles. Rents paid to monasteries.

Anno regni. The year of the reign. Abbrev. *A.R.*

Annotatione principis. By the signature of the prince.

Annua pensione. An ancient writ to provide the king's chaplain, if he had no preferment, with a pension.

Annulus et baculum. A ring and pastoral staff or crosier, the delivery of which by the prince was the ancient mode of granting investitures to bishoprics.

Annus deliberandi. The year allowed by the Scottish law for the heir to deliberate whether he will enter upon his ancestor's land and represent him. The period was afterwards reduced to six months.

Annus, dies, et vastum. Year, day, and waste. A forfeiture of the lands to the crown for a year and a day, incurred by the felony of the tenant, after which time the land escheats to the lord. Now abolished.

Annus inceptus habetur pro completo. A year entered on is reckoned as completed.

Annus luctus. The year of mourning. The year after a husband's death, within which his widow was, by the civil law, not permitted to marry, to prevent the inconvenience of a widow bearing a child which may be the child either of her deceased or her present husband.

Annuus redditus. A yearly payment of a certain sum of money without charging any freehold therewith; an annuity.

A non posse ad non esse sequitur argumentum necessarie negative licet non affirmative. An argument necessarily in the negative follows, from the not possible to the not being, though not in the affirmative.

A non usu. From not use. From non-user.

Ante. Before. The word when occurring in a report or text book, is used to refer the reader to a previous part of the book.

Antedate. To date a document before the day of its execution.

Antejuramentum, Præjuramentum. An oath taken by the accuser and the accused before any trial or purgation, namely, the accuser was to swear that he would prosecute the criminal, and the accused was to make oath, on the very day that he was to undergo the ordeal, that he was innocent of the crime of which he was charged. This was also called *Juramentum calumnie*.

Ante litem contestatam. Before the action is contested. See *Ante litem motam*.

Ante litem motam. Before the dispute arose; before litigation commenced; before a suit is put in motion. As a general rule, hearsay evidence (in cases where it is ad-

missible) must be of matters that have been done before the litigation arose in which it is proposed to adduce them as evidence, *e.g.*, pedegrees must have been made long before and without the prospect of the said subsequent litigation; and so also declarations of deceased persons against their own interest or in due course of their business. Whatever is *post litem motam* is not admissible, because that would enable people to make evidence for themselves. See the Ind. Evi. Act I of 1872 s. 32. Communications that are privileged from production for professional reasons are so whether made *ante litem motam* or (*a fortiori*) *post litem motam*, or *conspetu litis*.

Ante nati. Those born before a certain period, *e.g.*, before marriage. See *Post natus*.

Ante notitiam. Before notice.

Ante-nuptial. Before marriage. For example, *ante-nuptial* settlement.

Ante omnia. Before everything else; first and foremost; in the first place.

Anti-manifesto. The declaration of a belligerent, as a reply to the manifesto of the other belligerent, showing that the war as far as he is concerned, is defensive.

Antiqua customa. A duty which was collected on wool, wool-felts, and leather.

Antiquam. Anciently; of old.

Antiqua statuta. Ancient statutes; the Acts of Parliament from Richard I to Edward III.

Antistitium. A monastery; the chief priest's office.

Antithetarius. *Anthetarius*. The recriminating upon the accuser of the same crime which he has charged against the accused.

Apulatio. An agreement or compact.

A patre. By, or from, the father.

Aperta rapina. Open or public theft; a plundering.

Apertura testamenti. A form of proving a will in the Roman Law by acknowledgment of the witnesses before a magistrate.

Apices juris non sunt jura. Nice pretences and distinctions of law, are not laws. Fine points of law are not laws. The extremes of law are not law or make bad law. See *Summa lex... Summum jus...*

A piratis et latronibus capta dominium non mutant. Chattels captured or taken by pirates or robbers do not change their ownership. No one can acquire title to a thing the possession of which he has obtained by the commission of an offence. Compare s. 108, Exception 3, and illustrations (e) and (f) of the Ind. Con. Act IX of 1872.

Apostate capiendo. A writ formerly issued against an apostate, or one who had violated the rules of his religious order. It was addressed to the sheriff to deliver the defendant into possession of the abbot or prior.

A posteriori. From the latter. From the con-

sequence to the antecedent. See *Priora præsumuntur...*

Apparura. Furniture and implements. See *Carrucarum...*

Appellatione fundi omne ædificium et omnis ager continetur. Under the word *fundus* every building and every field is comprehended.

Appenditia. The appendages or pertinances of an estate. Hence our pentries or pent-houses are called *appenditia domus*. Sing. *Appendicium*.

Applicatio est vita regulæ. Application is the life of a rule.

Apponere. To pledge or pawn.

Appostille (Fr.) An addition or annotation to a document.

Apprendre (Fr.) To learn; hence, apprentice. To take or seize a thing, such as exercising the right of common. A fee or profit *apprendre* is fee or profit to be taken or received.

Apprenticii ad legem or *Apprenticii juris*. Apprentices to the law. The name given in early times to barristers, as opposed to serjeants (*servientes ad legem*).

Approbatores regis. Approvers of the king, *i. e.*, those persons who had the letting of the king's demesnes in small manors. Sheriffs were also called the king's approvers.

Appropriare communiam. To enclose or appropriate any parcel of land that was before open common, and thus to discommon it.

Appropriatio. *Appruare*. A making one's own; appropriation.

A precedentibus approbatis et usu. From approved precedents and use.

A prendre (profits). Rights exercised by one man in the soil of another, accompanied with participation in the profits of the soil thereof, as rights of pasture, or of digging sand. They are also called *rights of common*.

A principalioribus seu dignioribus est incipendum. We are to begin with the more worthy or principal parts.

A priori. From the former. From the antecedent to the consequence. See *Præsumuntur posteria...*

A propos (Fr.) To the purpose; opportunely; seasonably.

Apud. At.

Aqua cedit solo. Water passes with the soil. In the eye of the law water is land covered with water. The ownership of water, therefore, goes with that of the soil beneath. Where a river divides the properties belonging to different persons, the centre or *medium filum* of the stream is taken to be the boundary line.

If land adjoining a highway or river is granted, the half of the road or the half of the river is presumed to pass, unless there is something either in the language of the

deed, or in the nature of the subject matter of the grant, or in the surrounding circumstances, sufficient to rebut that presumption. This rule of construction applies equally whether the subject matter be a grant from the crown or a subject (*Bulbir Singh v. The Secretary of State for India in Council*, 22 All. 96, following *Micklethwaite v. Newlay Bridge Co.*, 1886, L. R. 33 Ch. D. 183, *Ecroyed v. Coulthard*, 1897, L. R. 2 Ch. D. 554, and *Lord v. The Commissioner for the City of Sydney*, 1859, 12 Moo. P. C. 473).

Aqua currit et debet currere ut currere solebat. Water flows and ought to flow as it used to flow, *i. e.*, there is no property in running water, but merely a right to use it; and this right may only be exercised as not to interfere with the use of the water by other persons similarly entitled.

Flowing water, it has been observed, is in one sense *publici juris*. Everyone has the right to enjoy the water flowing through the portion of soil belonging to him. The property in the water itself is not in the proprietor of the land through which it passes but only the use of it, as it passes along, for the enjoyment of his property and as incidental to it; and the rule is that *prima facie*, the proprietor of each bank of a stream is the proprietor of half the land covered by the stream, but *there is no property in the water*.

Every proprietor has an equal right to use the water which flows in the stream, and consequently no proprietor can have the right to use the water to the prejudice of any other proprietor. Without the consent of the other proprietors who may be affected by his operations, no proprietor can either diminish the quantity of water which would otherwise descend to the proprietors below, or throw the water back upon the proprietors above (*Wright v. Howard*, 1 S. & S. 203; *Mason v. Hill*, 3 B. & Ad. 312; *Acton v. Blundell*, 12 M. & W. 348; *Embrey v. Owen*, 6 Exch. 353; *Sampson v. Hoddinott*, 1 C. B., N. S. 611).

By the general law applicable to running streams every riparian owner has a right to what may be called the ordinary use of the water flowing past his land: for instance to the reasonable use of the water for his domestic purposes, and for his cattle, and this without regard to the effect which such use may have in case of a deficiency upon proprietors lower down the stream. But, further, he has a right to the use of it for any purpose, or what may be deemed the extraordinary use of it, provided that he does not thereby interfere with the rights of other proprietors either above or below him. Subject to this condition he may dam up the stream for the purpose of a mill, or divert the water for the purpose of irrigation. But he has no right to interrupt the regular flow of the stream, if he thereby interferes with the lawful use of the water by other proprietors, and inflicts upon them a sensible injury (*Per*

Lord Kingsdown, *Miner v. Gilmour*, 12 Moo. P. C. 156; *Nuttall v. Brucewell*, L. R. 2 Ex. 9).

See *Origus est solum... Sic utere tuo...*

The law as to riparian owners is the same in India as in England, and is stated in illustration (h) of s. 7 of the Easements Act V of 1882. Each proprietor has a right to a reasonable use of the water as it passes his land, but in the absence of some special custom, he has no right to dam it back, or exhaust it, so as to deprive other riparian owners of like use (*Narayan Hari Deval v. Keshav Shikram Deval*, 23 Bom. 506).

A riparian owner, whose a stream flows in a channel down from a property higher up, is entitled to the flow of water without interruption, and without substantial diminution caused by the upper proprietor, who may, for legitimate purposes, withdraw so much only of the water as will not materially lessen the downward flow on to his neighbour's land. He has no such right in the absence of a right obtained by him in virtue of contract with the lower proprietors or acquired by him as a consequence of prescriptive use. His common law right is to take for the purpose of irrigation, so much water only as can be abstracted without materially diminishing what is to be allowed to descend. What quantity of water can be abstracted and used without infringing that essential condition must, in all cases, be a question of the circumstances depending mainly upon the size of the stream and the proportion which the water taken bears to its entire volume (*Debi Pershad Singh v. Joynal Singh*, 24 Cal. 865).

Aqua ductus. A right to carry a water-course through another's ground.

Aqua et ignis interdicto. An interdict of water and fire; A banishment in Roman Law, a person excluded from water and fire (whether physical or sacrificial) being obliged thereby to withdraw himself.

Aqua haustus. A servitude which consists in the right to draw water from the fountain, pool, or spring of another. The right of watering cattle at a river, well, or pond.

Aqua immittende. (*Rom. L.*) A servitude which the owner of a house surrounded by other buildings so that it has no outlet for its waters, has to allow them to run upon and over his neighbour's land.

Aqua frigida. Fresh water.

Aquagium. A water-course; a toll paid for water carriage.

Aqua profluens. Running water.

Aquatiles. Living in water.

Aquatilium alia sunt regalia, alia communia.

Of water-fowl, some are of royal right, others of common right. Whales and sturgeons are considered as royal fishes which, when either thrown ashore or caught near the coast, are the property of the sovereign.

A quo. From whom or which.

A. R. See *Anno regni*.

Aratio. Agriculture; arable land.

Aratrum terræ. As much land as can be tilled by one plough. *Aratura terræ* is a term applied to a service rendered by a tenant to his lord in ploughing his land.

Arbiter. Arbitrator. An umpire; arbiter; a judge (one who decides according to equity, while the *judex* decides according to strict law); a lord; master; ruler.

Arbitramentum æquum tribuit cuique suum. An equitable decision gives to each one his due.

Arbitrio boni viri. To or by the judgment of a good man.

Arbitrio domini res æstimari debet. The price of a thing ought to be fixed by its owner.

Arbitrium. The judgment or decision of an arbitrator; a sentence; a decision.

Arbitrium est iudicium. An award is a judgment.

Arbitrium est iudicium boni viri secundum æquum et bonum. An award is the judgment of a good man, according to equity and justice.

Arbor consanguinitatis. A tree-shaped table showing the genealogy of a family; a genealogical tree.

Arbor, dum crescit; lignum cum crescere nescit. A tree is so called whilst growing; but wood when it ceases to grow.

Arca cyrographica. A chest wherein all the contracts, mortgages and obligations belonging to the Jews were preserved to prevent fraud, by order of Richard I.

Arcades ambo. Blackguards both.

Arcana imperii. The secrets of the empire; state secrets.

Archiepiscopus. An archbishop.

Arcta et salva custodia. Close and safe custody.

A rendre. (Fr.) To render or yield, such as rents and services.

A rescriptis valet argumentum. An argument drawn from rescript is sound. A rescript is a decision of the Pope or Emperor on a doubtful point of law.

Argentaria. A banking house; a bank.

Argentarius. A money-dealer; a money-changer; a banker.

Argentum Dei. God's money, *i. e.*, money given in earnest upon the making of any bargain.

Arguendo. In arguing; in the course of the argument.

Argumenta ignota et obscura ad lucem rationis proferunt et reddunt splendida. Arguments bring hidden and obscure facts to the light of reason and render them clear.

Argumentum ab auctoritate est fortissimum in lege. An argument from authority is most powerful in Law.

Argumentum ab impossibili plurimum valet in

lege. An argument deduced from an impossibility greatly avails in Law.

Argumentum ab inconvenienti est validum in lege; quia lex non permittit aliquod inconveniens. An argument from that which is inconvenient is good in Law; because the Law will not permit an inconvenience.

Argumentum ab inconvenienti plurimum valet in lege. An argument drawn from inconvenience is forcible in Law.

Although, where the law is clearly defined, its strict letter will not be departed from because inconvenience or hardship may result from its strict observance, yet, in cases where the law is not clear, or where the circumstances give rise to doubt, the Courts frequently allow their decision to be determined by such considerations. If there be equivocal expressions in any instrument, and great inconvenience must necessarily follow from one construction, it is strong to show that such construction is not according to the true intention of the grantor; but where there is no equivocal expression, and the words admit of only one meaning, arguments of inconvenience prove only want of foresight in the grantor, and the Court must act upon the instrument as it is, for it cannot make a new instrument for him.

The same rule applies in construing an Act. Where a statute is imperative no reasoning *ab inconvenienti* should prevail, for the function of a Judge is to interpret and not to make the law, and the legislature alone can remedy the inconvenience.

"The argument *ab inconvenienti*," says Mr. Wharton in his work on Legal Maxims, "is the argument most commonly used in our Courts of law and equity, for, whenever the law is found to be defective or insufficient to meet a particular case, and which is of daily occurrence, the argument *ab inconvenienti* arises, and it is permitted to prevail. By this means the inconvenience is removed, and a precedent is formed for future in-similar cases. This precedent is part of the common law, and remains so to be acted upon until disused or incorporated with the statute law."

With regard to public inconveniences, the rule is *lex citius tolerare vult privatum damnum quam publicum malum*. It is better to suffer mischief which is peculiar to one than an inconvenience which may prejudice many. Also, *salus populi est suprema lex*.

Argumentum à communiter accidentibus in jure frequens est. An argument drawn from things commonly happening, is frequent in Law.

Argumentum ad absurdum. An argument to prove the absurdity of anything.

Argumentum ad baculum. The argument of the staff. The appeal to force. Club law.

Argumentum ad hominem (or ad personam). Argument to the man; a personal applica-

tion; an argument drawn from a person's own principles, concessions, or actions.

Argumentum ad ignorantiam. An argument founded on the inability (through ignorance) of the opposing party to reply; to require the adversary to admit what one alleges as a proof, or to require a better.

Argumentum à divisione est fortissimum in jure. An argument from division is the most powerful in Law.

Argumentum ad judicium. An argument using proofs drawn from any foundations of knowledge or probability.

Argumentum ad misericordiam. The appeal to mercy or compassion.

Argumentum ad verecundiam. An argument founded upon the opinions of men whose learning, eminency or power have gained a name, and settled their reputation in the common esteem with some kind of authority.

Argumentum à majori ad minus negative non valet; valet à converso. An argument from the greater to the less is of no force negatively; affirmatively it is.

Argumentum a particulari ad universale. An argument from a particular to a general. An argument that attempts to show from a single instance that all other instances are the same, similar, or alike.

Argumentum à simili valet in lege. An argument from a like case avails in Law. Compare *Contrariorum... Dissimilium...*

Arma capere (or suscipere). To take arms. To be made a knight. See *Arma dare*.

Arma dare. To give arms. To dub or make a Knight. *Arma* is here used for a sword, although a knight was sometimes made by giving him the whole armour.

Arma in armatos sumere jura sinunt. The laws permit to take up arms against armed persons.

Arma libera. Free arms. When a servant was set free, a sword and lance were usually given to him.

Arma moluta (or emolita). Sharp weapons that cut, as opposed to blunt, which only break or bruise.

Arma mutare. To change arms; a ceremony observed in confirmation of a league or friendship.

Arma reversata. Reversed arms; a punishment for a traitor or felon.

Armiger. An armed person; an esquire; a title of dignity belonging to gentlemen who bear arms.

Armigeri fillius. An esquire's son. Abbrev. *Arm. fil.*

Armigeri natalitii. Esquires by birth.

Armorum appellatione, non solum scuta et gladii, et galea, sed et fustes et lapides continentur. Under the name of arms are included, not only shields and swords and helmets, but also clubs and stones.

Arvalia. Arable grounds.

Arrhe. Arrha. Arles. Earnest-money. Under the Roman Law this was forfeited if the purchaser failed to carry out the contract.

Arreatio peditum. Arraying of foot-soldiers.

Arrectatus. One suspected of a crime.

Arrenatus. Arraigned; accused.

Arrestandis bonis ne dissipentur. A writ which lay for a person whose cattle or goods were taken by another, who during a contest was likely to make away with them, and who had not the ability to render satisfaction.

Arrestando ipsum qui pecuniam recepit. A writ which issued for apprehending a person who had taken the king's prest money to serve in the wars and then hid himself in order to avoid going.

Arrester. To arrest; to stay.

Arrestment jurisdictionis fundandæ causâ. A process to bring a foreigner within the jurisdiction of the courts of Scotland. The warrant attaches a foreigner's goods within the jurisdiction and these will not be released unless caution or security be given.

Arresto facto super bonis mercatorum alienigenarum. A writ against the goods of aliens found within the United Kingdom, in recompense of goods taken from a denizen in a foreign country, after denial of restitution. The ancient civilians called it *clargatio*, but by the moderns it is termed *reprisalia*.

Arrha. See *Arrhe*.

Arrogatio. The adoption of a person of full age, while adoption (*adoptio*) properly so called was of a person under full age.

Arts. An art; skill.

Arts artium. Art of arts.

Arser in le main. The burning in the hand. The punishment of criminals who had the benefit of clergy. Now abolished.

Arts est celare artem. True art consists in concealing that any art is used.

Art fit quod a teneris primùm conjungitur annis. That becomes an art which is joined to us from our tender years.

Articuli cleri. Statutes containing certain articles relating to the church, clergy, and causes ecclesiastical.

Articuli super cartas. Articles upon the charters.

Articulo mortis. At the moment of death.

Articulus. An article or complaint exhibited by way of libel in a court Christian.

Articulus cleri. A resolution of convocation.

A rubro ad nigrum. From the red to the black. To proceed to the sense of the text in a statute by looking at the title; the title was written in red the text in black.

Asceterium. An abode of ascetics; a hermitage; a monastery.

Ascriptitius. Enrolled or received in any community; a naturalized foreigner.

A spoliatus debet ante omnia restituere. A person

wrongfully deprived of his property is entitled to restitution before all others.

Asportatio. A carrying away; theft.

Asportavit. He has carried away. See *Felonia cepit*...

Assartum. Assart; an offence committed in the forest by pulling up the woods by the roots that are thickets and coverts for the deer, and making the ground plain as arable land.

Assensu patris. Consent of the father. A species of dower made when the husband's father was alive, and the son, by his consent, expressly given, endowed his wife with parcel of his father's lands. Now abolished.

Assensus ad idem. A consent in the same sense which is necessary to a binding contract.

Two or more persons are said to consent when they agree upon the same thing in the same sense (*Ind. Con. Act IX of 1872 s. 13*).

Assignatio. An assignment.

Assignatus utitur jure auctoris. The assignee makes use of the right of his assignor. An assignee is clothed with the rights of his principal.

An assignment is a transfer either by the act of parties or by operation of law. An instance of a transfer by the owner's act is an assignment of a lease by deed. A transfer by operation of law is in the case of the heir of an intestate who is an assignee in law of his ancestor, or in the case of a transfer of an insolvent's estate to the official assignee.

It is a well known rule that no one can transfer to another a right or title greater than he himself possesses, *nemo plus juris in alium transferre potest quam ipse habet*, and, *non dat qui non habet*. Compare 108 of the Indian Contract Act IX of 1872, which relates to moveable property. If there be two joint tenants of land, a grant or a lease by one operates only of his own moiety. In like manner where a tenant for life grants a lease of the property for a term of years, and dies before the term expires, the lease comes to an end on the death of the life-tenant, for, *resoluto jure concedentis resolvitur jus concessum*.

In mercantile transactions, also, the general rule, undoubtedly, is that a person cannot transfer to another a right which he himself does not possess. There are, however, some exceptions to this rule, as in the case of negotiable instruments, &c. See the exceptions under s. 108 of the Ind. Con. Act IX of 1872.

As a general rule, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods may stop them *in transitu*, i. e., so long as they are in the course of transit, and retain them until payment of the price; and this right is usually not affected by any sub-sale of the goods which the buyer may have made without the seller's assent. But the right of stoppage ceases if the buyer, having obtained a bill of lading or

other document showing title to the goods, assigns it while the goods are in transit, to a second buyer, who is acting in good faith and who gives valuable consideration for them (*Leask v. Scott*, 2 Q. B. D. 376; *Ind. Con. Act IX of 1872, s. 102*). The second buyer is entitled to the goods free from any right in the original seller to stop them, and thus his position is better than that of the original buyer. So also, where the document showing title to goods is pledged with another person acting in good faith, to secure a specific advance made specially upon such document, the original seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit (*Act IX of 1872, s. 103*). Generally, the assignee of property takes it subject to all the obligations or liabilities and clothed with all the rights which attached to it in the hands of the assignor, for *qui in jus dominiumve alterius succedit jure ejus uti debet*.

Although the property of a bankrupt vests in trustees, such property does not include rights of action in respect of torts, or even breaches of contract resulting immediately in injuries wholly to the person or feelings of the bankrupt. Such rights therefore do not pass to the trustee (*Beckham v. Drake*, 2 H. L. Cas. 579; *Rogers v. Spence*, 12 Cl. & F. 700), for such personal rights go with the person of the bankrupt.

Plaintiff purchased from the first defendant, who purchased from the person admitted to be the owner in 1856. The resisting defendants claimed under a subsequent sale by the same person. *Held*, that on the simple principle that, after the conveyance to the first defendant, the owner of the land had nothing whatever to convey, the resisting defendants took nothing, and the plaintiff was entitled to recover, there being no fraud on the part of the plaintiff, and the mere fact of his absence or silence for a period short of the period for bringing an action prescribed by the statute of limitations, being a matter altogether indifferent (*Virabhadra Pillai v. Hari Rama Pillai*, 3 Mad. H. C. R. 38).

Assisa. A law; a jury; a sitting in session.

Assisa bonæ patriæ. See *Bona patriæ*.

Assisa cadere. To be non-suited, as when there is such a plain and legal insufficiency in an action that the plaintiff cannot successfully proceed any further in it.

Assisa cadit in juratum. The controversy is submitted to trial by jury.

Assisa cadit in perambulationem. The controversy is submitted to local investigation. In cases of disputed boundaries, when the jury declared their ignorance of the boundaries, the judge would order a perambulation with a view to ascertain the boundary.

Assisa continuanda. An ancient writ addressed to the justices of the assize for the continuation, i. e., adjournment of a cause, when certain facts put in issue could not have

been proved in time by the party alleging them.

Assisa de Foresta. Assise of the Forest. A statute touching orders to be observed in the king's forest.

Assisa de utrum. A writ which lay for the parson of a church whose predecessor had alienated the land and rents of it. Also called *assisa juris utrum*. Now obsolete.

Assisa mortis antecessoris. See *Mort d'ancestor*.

Assisa nocuenti. Assise of nuisance, which lies, where a man makes a nuisance to the free-hold of another, to redress the same.

Assisa nova disseisinæ. Assise of novel disseisin. An action to recover property of which a party has been disseised *i. e.*, dispossessed *after* the last circuit of the judges. It was called *novel disseisin* because the justices in *eyre* went their circuits from seven years to seven years, and no assise was allowed before them which commenced *before* the last circuit, which was called an *ancient* assise; and that which was upon a disseisin *since* the last circuit, an assise of *novel* disseisin. Now abolished.

Assisa panis et cerevisie (or *cervisie*). The power or privilege of assizing or adjusting the weight and measure of bread and beer. Stat. 51 Hen. III.

Assisa proroganda. A writ which was directed to judges to stay proceedings by reason of a party to them being employed in the king's business. Now obsolete.

Assisus. Rented or farmed out for certain assessed rent. See *Terra assisa*.

Associatio. A writ or patent sent by the Crown to the Justices appointed to take assizes to have others associated with them; it is usual where a judge becomes unable to attend to his circuit duties, or dies.

Assuetudo. Custom; habit.

Assumpsērunt super se. They took upon themselves.

Assumpsit. He has promised. The name of an action which lay for damages for breach or non-performance of a *simple* contract or promise, either expressed or implied.

Astirarius hæres. *Astrarius hæres*. An heir apparent who has been placed, by conveyance, in possession of his ancestor's estate, during such ancestor's life. This is where the ancestor by conveyance hath set his heir apparent and his family in a house in his life time.

Astribuitur. A forfeiture of double the damage.

Astrum. A house or place of habitation.

A sumo remedio ad inferiorem actionem, non habetur ingressus, neque auxilium. From the highest remedy to the lower action there is neither ingress nor assistance. Where a man resorted to the highest remedy, he could not afterwards avail himself of an inferior remedy.

Asylum. A sanctuary or place of refuge; an

asylum; a place for the treatment and habitation of persons of unsound mind.

Atavia. A great-grandmother's grandmother. *Atavus*. The great-grandfather's or great-grandmother's grandfather. See *Pater*.

A tempore cujus contrarii memoria non existet. From time of which there exists not memory to the contrary. From time immemorial.

Atia. Ill will. See *De odio*...

Attachiamenta bonorum. A distress formerly taken upon goods and chattels, by the legal *attachiators* or bailiffs as security to answer an action for personal estate or debt.

Attachiamenta de spinis et borvis (or *bosco*). A privilege granted to the officers of a forest to take to their own use thorns, brush, and windfalls, within their precincts.

Attains du fct. (Fr.) Convicted of the fact, caught by it, having it brought home to one.

Attaint d'une cause. (Fr.) The gain of a suit.

Attinctus. Attainted; stained; tainted.

Attornare rem. To *attorn* or turn over money and goods, *viz.*, to assign or appropriate them to some particular use and service.

Attornato faciendo vel recipiendo. A writ which commanded a sheriff of a county court to receive and admit an attorney to appear for the person taking out the writ.

An besoin. In case of need.

Auctor. A seller; a vendor.

Auctorimentum. A consideration; wages; pay; hire; reward.

Auctoritas. A view; opinion; judgment.

Auctoritatis philosophorum, medicorum, et poetarum sunt in causis allegandæ et tenendæ. The opinion of philosophers, physicians and poets are to be alleged and received in causes.

Aucupia verborum sunt iudice indigna. Catching at words is unworthy of a judge.

Audi alteram partem. Hear the other side; *i. e.*, no one should be condemned unheard.

It is an indispensable requirement of justice that the party who has to decide shall hear both sides, giving each an opportunity of hearing what is urged against him (*Per Erle, C. J., 16 C. B. N. S. 416*), that no one is to be condemned, punished, or deprived of his property in any judicial proceeding, unless he has had an opportunity of being heard. An award made in violation of this principle may be set aside (*Thorburn v. Barnes, L. R. 2 C. P. 884; Re Brook, 16 C. B. N. S. 403*) No person should be punished for contempt of Court, unless the specific offence charged against him be distinctly stated, and an opportunity of answering it be given to him (*Re Pollard, L. R. 2 P. C. 106; Code of Crim. Pro. V of 1898, ss. 480-1*). And an immemorial custom cannot avail in contravention of this principle (*Williams v. Ld. Bagot, 3 B. & C. 772*).

Audiendo et terminando. A writ or commission to certain persons to appease and punish any insurrection or great riot.

Auditâ querelâ defendantis. The complaint of the defendant has been heard. An equitable action whereby a person against whom judgment had been given might prevent execution on the ground of some matter of defence which there was no opportunity of raising in the original action. The writ of *auditâ querelâ* is now obsolete.

Augmentatio. Augmentation; the name of a Court erected 27 Hen. VIII for the determining of suits and controversies relating to monasteries and abbey lands.

Augusta legibus soluta non est. The wife of the emperor is not exempted from the laws.

Aula Regis (or *Regiâ*). The royal palace. A court established by William the Conqueror; it was composed of the great officers of state, and followed the king's household in all its expeditions.

Auricularius. A listener; a secretary; a counsellor.

Aurum Regina. The Queen's gold. Anciently a revenue of the queen consort due from every person who made a voluntary offering or fine to the king amounting to ten marks or upwards, for some privileges, grants, licenses, pardons, or other matters of royal favour conferred upon him by the king.

Auter (or *autre*) *action pendante.* Another action pending. see *Lis pendens*.

Auter (or *autre*) *droit.* The right of another. An executor entitled as such, and not in his own right (*i. e., in son droit*) to the estate of a testator, is said to be entitled *in autre droit, i. e.,* in the right of his testator or of the beneficiaries entitled under the testator's will.

Autrefois acquit. Formerly acquitted. By this plea a prisoner charged with an offence pleads that he has been tried before and acquitted of the same offence. See the Code of Crim. Pro. V of 1898, s. 403.

Autrefois attaint. Formerly attainted. A plea by and accused person that he has formerly been attainted for the same crime.

Autrefois convict. Formerly convicted. A plea by an accused person that he has been previously convicted of the same crime of which he is accused. See the Code of Crim. Pro. V of 1898, s. 403.

Autre vie, Tenant pur. Tenant for another's life. An estate for the life of another is an estate of freehold, though it is the lowest or least estate of freehold which the law acknowledges. An estate for the life of another is not so great an estate as for one's own life.

Auxilia fiunt de gratiâ et non de jure,—cum dependant ex gratia tenentium, et non ad voluntatem dominorum. Aids are granted of favour and not of right,—as those aids depend upon the kindness of the tenants, and not upon the will of the lords.

Auxilium. Help; aid; assistance.

Auxilium ad filium militem faciendum et filiam maritandam. An ancient writ which was addressed to the sheriff to levy compulsorily an aid towards the knighting of a son and the marrying of a daughter of the tenants *in capite* of the crown.

Auxilium curiæ. A precept or order of court citing and convening a party at the suit and request of another, to warrant something.

Auxilium facere alicui in curiâ regis. To become another's attorney and representative in the king's court, an office formerly undertaken by courtiers for their dependents in the country.

Auxilium petere. Aid-prayer. A petition in court to call in help from another person that hath an interest in the thing contested. This gives strength to the party praying in aid, and to the other likewise, by giving him an opportunity of avoiding a prejudice growing towards his own right. As a tenant for life or for a term of years, &c., may in an action of ejectment by a third party, pray in aid of him in reversion.

Auxilium regis. Aid of the king. Money levied for the royal use, as where taxes are granted by Parliament. The king's tenant may pray in aid of the king when rent is demanded from him by others. The proceedings are then stayed until the crown counsel are heard. See *Procedendo in loquela*.

Auxilium vicecomiti. A customary aid or duty anciently payable to sheriffs out of certain manors, for the better support of their offices.

A verbis legis non est recedendum. From the words of the law there should not be any departure, *i. e.,* Acts of Parliament should be strictly construed.

A court of law will not make any interpretation contrary to the express letter of a statute; for nothing can so well explain the meaning of the makers of the Act as their own direct words, for *index animi sermo*. "Nothing" observed Lord Denman "is more unfortunate than a disturbance of the plain language of the legislature, by the attempt to use equivalent terms (*Everard v. Poppleton*, 5 Q. B. 184; *per Coltman, J., Gradsby v. Barrow*, 8 Scott, N. R. 804).

See *Benignæ faciendæ ... Quoties in verbis ...*

Averia. Cattle; also chattels, generally.

Averia carruca. Beasts of the plough, exempt from distress, if other sufficient goods can be found to be distrained upon. See the Code of Civ. Pro. XIV of 1882, s. 266 (b).

Averia elongata. Cattle eloiigned, *i. e.,* carried off.

Averis captis in withernam. Cattle taken in withernam or by way of reprisal. A writ granted to one whose cattle were unlawfully distrained by another and driven out of the

county in which they were taken, so that they could not be replevied by the sheriff. The writ enabled him to take to his own use the cattle of the wrong-doer. See *Capias in withernam*.

Averium. The best live beast due to the lord as a heriot on his tenant's death.

Avia. A grandmother.

A vinculo matrimonii. From the bond of marriage. From the chain of wedlock. This was a total divorce obtained on some canonical impediment existing before marriage. The marriage was declared void *ab initio* and the parties were separated *pro salute animarum* (for the safety of their souls). The issue, if any, were illegitimate, and the parties might contract another marriage. See *A mensa...* *Precontractus*.

Avisamentum. Advice or counsel.

A voluntate procedit cause vitii atque virtutis. The cause of vice and virtue proceeds from the will. see *Omne actum...*

Avoué. (Fr.) A solicitor or attorney.

Avunculus. An uncle by the mother's side.

Avunculus magnus. A great uncle.

Avus. A grand-father. See *Pater*.

Axioma. An assumed proposition; an axiom; an undisputable truth.

Ayant cause. (Fr.) A receiver. Also a successor or one to whom a right has been assigned either by will, gift, sale, exchange, or the like.

Ayle. A grandfather. See *Aiel*.

B

Baga. A bag or purse.

Baga parva. A little bag; hence Petty-bag Office.

Balanctis deferendis. An obsolete writ addressed to a corporation for the carrying of weights to such a haven, there to weigh the wool anciently licensed for transportation.

Balliva. A bailiwick or jurisdiction.

Ballivo amovendo. An ancient writ to remove a bailiff from office, for want of sufficient living in his bailiwick.

Ballivus. A bailiff.

Banc le Roy. The King's Bench.

Bancus. A seat or bench of justice.

Bancus Communis. Common Bench. The court of Common Pleas was anciently so called.

Bancus Communium Placitorem or *Banc le Common Pleas*. Court of Common Pleas, or the Common Bench.

Bancus Regine or *Banc la Reine*. Queen's Bench.

Bancus Regis. The King's Bench.

Bancus ruptus. A bench broken; a bankrupt.

Bancus Superior. The Upper Bench; the King's Bench was so called during the Protectorate. Abbrev. *Banc. Sup.*

Bannire ad plarita, ad molendinum. To summon tenants to serve at the lord's courts, to bring corn to be ground at his mill.

Bannitus. *Banniatu*s. An outlaw a banished man.

Bannum res missa. A thing banned or denounced as forfeited or lost.

Barones Scaccarii. Barons of the Exchequer. Judges of the Court of Exchequer were so styled.

Baron et feme. Husband and wife.

Basileus. A king; governor.

Basilica. A body of law framed in A. D. 880.

Bassa tenura. A base tenure. Base tenants are those who hold at the will of their lord.

Bastard eigne. The eldest child born in concubinage, its mother being afterwards married to the father. An elder son born before marriage; thus if a man have a natural son, and afterwards marry the mother and by her have legitimate son, the latter is called *mulier quism'*, and the elder son *bastard eigne*.

Bastard. One who is born in concubinage; a bastard.

Belles lettres. Polite literature.

Bellum solemniter denunciatum. A war solemnly declared or proclaimed.

Benedicta est expositio quando res redimitur a destructione. Blessed is the exposition when any thing is saved from destruction. See *Benigna facienda...*

Beneficio primo ecclesiastico habendo. An ancient writ addressed by the king to the Lord Chancellor, to bestow the benefice that should first fall in the royal gift, above or under a specified value, upon the person named therein.

Beneficium. A benefice; an ecclesiastical living or promotion; an estate in fee. Plur. *Beneficia*.

Beneficium abstinendi. The power of an heir to abstain from accepting the inheritance.

Beneficium cedendarum actionum. The privilege by which a surety could, before paying the creditor, compel him to make over to him the actions which belonged to the stipulator, so as to avail himself of them. See the Ind. Con. Act IX of 1872, s. 140.

Beneficium competentie. A right of certain persons, *i. e.*, partners, which saves them from being condemned beyond such an amount as they can pay without depriving themselves of the necessities of life.

Beneficium divisionis. The right of a co-surety to contribute only ratably with the other solvent sureties. See the Ind. Con. Act IX of 1872, ss. 146-7.

Beneficium inventarii. The privilege which an heir had by an inventory of the testator's property, before he entered into possession of it, to protect himself from the debts beyond the amount of property inventoried.

Beneficium non est datum nisi propter officium. A remuneration is not given unless on account of a duty performed.

Beneficium ordinis (or *excussionis*, or *discussionis*). A privilege by which a creditor was bound to sue the principal debtor first, and could only sue the sureties for that which he could not recover from the principal. Now abolished. See *Principalis debet semper...*

Beneficium principis debet esse mansurum. The benefit of a prince ought to be lasting.

Beneficium separationis. The right sometimes granted to creditors to have the goods of an heir separated from those of the testator in favour of creditors, i. e., if the heir was insolvent.

Benevolentia. A voluntary gratuity given by the subjects to the king; a tax.

Benevolentia regis habenda. The form of purchasing the royal pardon and favour, in ancient fines and submissions, to be restored to estate, title or place.

Benignæ faciendæ sunt interpretationes, propter simplicitatem laicorum, ut res magis valeat, quam pereat; et verba intentioni non e contra debent inservire. Constructions are to be made liberally on account of the ignorance of the unprofessional, so that the thing may rather avail than perish; and words ought to be made subservient to the intention, not contrary to it. The judges will rather apply the words of the document to fulfil its lawful intent, than destroy such intent because of insufficient language, for to the intention, when once discovered, all technical forms of expression must give way. But it should be borne in mind, in applying this maxim, that the intention is not to be gathered from anything outside the instrument.

The two rules of most general application in construing a written instrument are—(1) that it shall, if possible, be so interpreted, that the thing may rather avail than perish, and (2) that such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties. In construing a deed every part of it must be made, if possible, to take effect, and every word must be made to operate in some shape or other. The construction, likewise, must be such as will preserve rather than destroy; it must be reasonable, and agreeable to common understanding; it must also be favourable, and as near the minds and apparent intents of the parties as the rules of law will admit. "I do exceedingly commend the judges" observed Lord Hobart "that are curious and almost subtle.....to invent reasons and means to make acts according to the just intent of the parties, and to avoid wrong and injury which by rigid rules might be wrought out of the act." (Hobart, 277; cited by Turner V.-C., *Squire v. Ford*, 9 Hare 57).

The words are to be construed according to their strict and primary acceptation, unless, from the immediate context or from the intention of the parties apparent on the face of the instrument, the words appear to

have been used in a different sense, or unless, in their strict sense, they are incapable of being carried into effect.

In construing a will, the words in general are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected. If the language of a will is perfectly unambiguous and precise, it cannot be strained for the purpose of giving effect to what possibly might have been the intention of the testator, but is not expressed or implied in the terms of the testament (*Mrs. Frances George v. Mrs. Helena George*, 6 N.-W. P. 219). See *Ambiguitas verborum patens...*

The intention of the testator is the polar star by which the court should be guided, provided no rule of law is thereby infringed. The principle deducible from the authorities is that it is the primary duty of the court so to construe a will as to carry out, as far as possible, the intentions of the testator. For the purpose of ascertaining the primary and secondary intentions, it is, of course, necessary to take all the material facts as to the testator's family into consideration, and to read the various portions of his will as a whole (*Khimji v. Moruji*, 22 Bom. 533). While the intention of the testator ought to be the only guide to the interpretation of his will, yet it must be his intention as collected from the words employed by himself in his will; no surmise or conjecture of any object which the testator may be supposed to have had in view can be allowed to have any weight in the construction of his will unless such object can be collected from the plain language of the will itself (*Earl of Scarborough v. Doe*, 3 A. & E. 962). See *Non quod voluit...*

To ascertain the meaning intended to be applied to a particular phrase, it is necessary, first, to consider the words of the will, and, next, the surrounding circumstances, which may affect the testator's meaning (*Soorjeemoney Dossee v. Denobundoo Mullick*, 6 Moo. I. A. 526; *Bhuggobutty Prosonno Sen. v. Gooroo Prosonno Sen*, 25 Cal. 112). Where a clause in a will is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred (*Ind. Suc. Act X of 1865, s. 71*). If one part of a document is testamentary in its character, it may be presumed that the remainder, if the language is capable of that construction, is also intended to be testamentary (*In re Komola Kant Biswas*, 4 O. L. R. 401). For other provisions as to the construction of wills see the Ind. Suc. Act X of 1865, ss. 61 to 98.

Deeds and contracts of the people of India ought to be liberally construed. The form of expression, the literal sense, is not to be so much regarded as the real meaning of the parties which the transaction discloses (*Hunooman Prasad v. Mt. Babooee Munraj Koonveree*, 6 Moo. I. A. 393). The rule of construction to be applied to

an instrument must in any case be to give effect to the intention of the parties according to the plain meaning of that language, and to construe the same otherwise is to defeat that obvious intention (*Mithibai v. Limji Nowroji Banaji*, 6 Bom. 151). Contracts of mortgage and conditional sale must be construed in accordance with the intention of the parties, which can only be gathered from the terms of the instrument (*Ramasami v. Samiyappanayakan*, 4 Mad. 179). The construction of an ambiguous stipulation in a written agreement may be governed or qualified by a recital; but if the intention is clearly to be collected from the operative words, that intention is not to be defeated or controlled because it may go beyond what is expressed in the recital (*Marcur v. Sigg*, 2 Mad. 239). In construing a mortgage deed the terms which are of a doubtful character, the intention of the parties as deducible from their conduct at the time of execution, and other contemporaneous documents executed between them, is to be looked to (*Jufur Husen v. Ranjit Singh*, 21 All. 4). In interpreting a document, a clause which is inconsistent, in any construction thereof, with the remaining provisions of the document, must be rejected (*Chatarbhuj v. Dwarku Prasad*, 18 All. 388). There is no reason why a rule of construction, intended to aid in arriving at the meaning of the parties, should not be applied in construing a power-of-attorney as much as any other document (*Jonmenjoy Coondoo v. Watson*, 10 Cal. 901, P. C.). A power-of-attorney must be construed strictly (*Mahukchand v. Shan Moghan*, 14 Bom. 590).

In construing an Act the Court ought not to strain it in favour of an interference with private rights which is not justified by the primary sense of the language (*Queen-Empress v. Harilal*, 14. Bom. 180). When the terms of an Act are clear and plain, it is the duty of the Court to give effect to it as it stands (*Gureebullah Sirkar v. Mohun Lall Shaha*, 7 Cal. 127; 8 C. L. R. 409). In interpreting statutes the more liberal construction ought not to prevail if it is opposed to the intention of the Legislature as apparent by the Statute, and if the words are sufficiently flexible to admit of some other construction by which that intention will be better effectuated (*Per Lord Selbourne, Caledonian Railway Co. v. North British Railway Co.*, 1881, L. R. 6 App. Cas. 122; *Queen-Empress v. Hori*, 27 All. 391). Where obscurities of expression occur in an enactment, that interpretation should be preferred which is most consonant to equity, especially where it is in conformity with the general design of the legislature. See *In ambigua voce...* "If" remarked Jervis C. J., "the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied, where their import is doubtful or obscure.

But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning" (11 C. B. 391). It is a good rule in the construction of Acts of Parliament, that the Judges are not to make the law what they may think reasonable, but to expound it according to the common sense of its words (*Per Creswell, J., Biffin v. Yorke*, 6 Scott, N.R. 235). Judges ought to remember that their duty is *jus dicere et non jus dare*, to administer the law and not to make law. Where two procedures or two remedies are provided by statute, one of them must not be taken as operating in derogation of the other (*Ajduhu Prasad v. Bahnikand*, 8 All. 354).

Acts of parliament and wills alike ought to be construed according to the intention of the parties who made them; and the preceding remarks as to the construction of deeds and wills will, therefore, generally hold good with reference to the construction of statutes, the great object being to discover the true intention of the legislature, acting, at the same time, upon the rule as to giving effect to all the words of the statute, a rule universally applicable to all writings, and which ought not to be departed from except upon very clear and strong grounds (*Judgm.*, 8 Exch. 860). The general rule for the construction of the Acts of Parliament is that the words are to be read in their popular, natural and ordinary sense, giving them a meaning to their full extent and capacity, unless their is reason upon their face to believe that they were not intended to bear that construction (*Per Byles, J., Birks v. Allison*, 13 C. B. N. S. 23).

A remedial statute shall be construed liberally so as to include cases which are within the mischief which the statute was intended to remedy (*Twyne's Case*, 3 Rep. 80).

Where the intention of the legislature is doubtful the inclination of the court will always be against that construction which imposes a burden (*Per Lord Brougham, Stockton and Darlington R. Co. v. Barrett*, 11 Cl. and F. 607; *per Parke, B., Ryder v. Mills*, 3 Exch. 869; *Wroughton v. Turle*, 11 M. & W. 567), tax (*Per Parke, B., Re Michlethwait*, 11 Exch. 456; *A. G. v. Bradbury*, 7 Exch. 118; *Mayor of London v. Parkinson*, 10 C. B. 228; *Vaughall Bridge Co. v. Sawyer*, 6 Exch. 509), or duty (*Marg. of Chandos v. Inland Revenue Commrs.*, 6 Exch. 479.) on the subject. It has been designated as a great rule in the construction of the fiscal laws, that they are not to be extended by any laboured construction but that the court must adhere to the strict rule of interpretation; and if a person who is subject to a duty in a particular character or by virtue of a particular description no longer fills that character or answers to that description, the duty no

longer attaches upon him, and cannot be levied (*Per* Lord Westbury, *Dickson v. Reg.*, 11 H. L. Cas. 184; *In re The Port Canning Land Co. Ltd.*, 16 W. R. 208). Acts of Parliament imposing stamp duties ought to be construed according to the plain and ordinary meaning of the words used (*Lord Foley v. Inland Revenue Commrs.*, L. R. 3 Exch. 268). If a statute imposing a toll contain also exemptions from it in favour of the Crown and of public, any clause so exempting from toll is to have a fair, reasonable and not strict construction (*Per* Byles, J., *Toomer v. Reeves*, L. R. 3 Q. P. 66). It is a general rule that penal and revenue Acts are to be construed strictly, a liberal construction being given to the words of exception. Every charge upon the subject must be imposed by clear, unambiguous words (*Tilsley's Digest of Stamp Laws, Introduction; Reference under Stamp Act*, 9 Mad. 148, F. B.). The Stamp Act being a revenue Act imposing pecuniary burdens, the rule of construction is that in case of doubt, the construction most beneficial to the subject is to be adopted (*Anonymous Case*, 10 Cal. 282; *Meghji Hansraj v. Ramji Joita*, 8 Bom. H. C., O. C., 180; *Dullabh Shivlal v. T. C. Hope*, *Ibid.*, A. C. 213; *Amanat Begam v. Bhajan Lal*, 8 All. 438, F. B.). An enactment imposing stamp-duties upon the subject must be strictly construed (*Girdhar Nagjishet v. Ganpat Moroba*, 11 Bom. H. C., A. C., 129; *Empress v. Soddamund Mahanty*, 8 Cal. 259; 10 C.L.R. 367).

The words of a penal statute shall be construed for the benefit of him against whom the penalty is inflicted, and the language of the statute must be strictly looked at in order to see whether the person against whom the penalty is sought to be enforced has committed an offence within it (*Per* Field, J., *Graff v. Evans*, 8 Q. B. D. 373; 51 L. J. M. C. 25). "The principle," remarked Lord Abinger "adopted by Lord Tenterden (*Proctor v. Mainwaring*, 3 B. & Ald. 145) that a penal law ought to be construed strictly, is not only a sound one, but the only one consistent with our free institutions. The interpretations of statutes has always in modern times been highly favourable to the personal liberty of the subject, and I hope will always remain so" (*Henderson v. Sherborn*, 2 M. & W. 286; *Fletcher v. Calthrop*, 6 Q. B. 887; *Murry v. Reg.*, 7 Q. B. 707). Penal Statutes must be construed strictly, *i. e.*, nothing is to be regarded as within the meaning of the Statute which is not within the letter, and clearly and intelligibly described in the very words of the statute itself (*Empress v. Kola Lelang*, 8 Cal. 214).

Statutes of Limitation, being in limitation of common right, are not to be extended by construction to cases not clearly included within their terms (*Parashram Jethmal v. Rakhma*, 15 Bom. 299). An Act of Limitation, being restrictive of the ordinary right to take legal proceedings, must, where its language is ambiguous, be construed strictly, *i. e.*, in favour of the right to proceed

(*Umiasankar Lakshmiram v. Chhotalal Vajeram*, 1 Bom. 19). The courts of British India, in applying Acts of Limitation are not bound by the rule established by a balance of authorities in England, that statutes of this description must be construed strictly. On the contrary, such Acts, where their language is ambiguous or indistinct should receive a liberal interpretation, and be treated as "statutes of repose and not as of a penal character or as imposing burdens" (*Per* Mahmood J., *Mangu Lal Kandhai Lal*, 8 All. 475). Statutes of Limitation are in their nature strict and inflexible enactments, and ought to receive such a construction as the language in its plain meaning imports (*Luchmee Bulsh Roy v. Runjeet Ram Panday*, 13 B. L. R., P. C., 177).

The heading of a portion of a statute may, it seems, be referred to to determine the sense of any doubtful expression in a section ranged under it (*Hammersmith R. Co. v. Brand*, L. R., 4 H. L. Cas. 171; *E. Counties R. Co. v. Marriage*, 9 H. L. Cas. 32), and a recital of an Act of Parliament, stating its object, has been held to limit general words in the enacting part to the object as declared in the recital (*Howard v. Earl of Shrewsbury*, L. R. 17 Eq. 378; 34 L. J. Ch. 495).

Formerly, the title of a statute was no part of the law and in strictness ought not be taken into consideration at all (*Salkeld v. Johnson*, 2 Exch. 283; *Claydon v. Green*, L. R. 3 C. P. 522). But it seems that it is now part of the Act (*Fielding v. Morley*, 1899, 1 Ch. 1; 67 L. J. Ch. 611).

The marginal note to a section in the copy printed by the Queen's printer forms no part of the statute itself, and does not bind as explaining or construing the section (*Claydon v. Green*, L. R. 3 C. P. 522; followed in *Sutton v. Sutton*, 22 Ch. D. 521; 52 L. J. Ch. 384). Marginal notes are no part of an enactment (*Dukhi Mullah v. Halway*, 23 Cal. 55). Marginal notes to sections of an Act do not form part of the Act (*Punardeo Narain Singh v. Ram Sarup Roy*, 25 Cal. 858, following *Sutton v. Sutton*, L. R. 22 Ch. D. 511, and *Dukhi Mullah v. Halway*, 23 Cal. 55). But held, in *Kameshar Prasad v. Bhikhan Narain Singh* (20 Cal. 609) that the State publication of the Indian Acts being framed with marginal notes, such notes may be used for the purpose of interpreting an Act.

The preamble is undoubtedly a part of the Act and may be used to explain it (*Salkeld v. Johnson*, 2 Exch. 283). Where the enacting sections of a statute are clear, the terms of the preamble cannot be called in aid to restrict their operation, or to cut them down (*Queen-Empress v. Indarjit*, 11 All. 262). But the enacting words of a statute may be carried beyond the preamble, if words be found in the former strong enough for the purpose (*Chinna Aiyar v. Mahomed Fakrudin Saib*, 2 Mad. H. C. R. 322). But held, that the

preamble to a Regulation (Mad. Reg. XXV of 1802) formed no part of the enactment (*Ooligappa Chetty v. Arbutnot; Collector of Trichinopoly v. Lekamani; Pedda Anani v. Zemindar of Marungapuri*, 14 B. L. R. P. C., 115).

Where the proviso of an Act of Parliament is directly repugnant to purview, the proviso shall stand, and be a repeal of the purview, as it speaks the last intention of the makers (*Attorney-General v. Chelsea Water-Works Co.*, Fingib. 195). In construing an Act of the Government of India passed in the form peculiar to the Hindu Wills Act (XXI of 1870), the sound rule of construction is to give their full and natural meaning to the provisos, and only to give effect to the enactments contained in the applied sections and chapters so far as the latter do not contravene the full and natural meaning of the provisos (*Ulangamonjori Dabee v. Sonamoni Dabee*, 8 Cal. 637; 10 C. L. R. 459).

As to the construction to be applied to illustrations contained in an enactment, see *Exempla illustrant...*

As to the construction of general and special enactments repugnant to each other, see *Leges posteriores...*

The doctrine of *cy-près* may also be referred to this maxim. See *Cy-près*.

Benignior sententia, in verbis generalibus vel dubiis, est praeferenda. Where words are general or doubtful, that construction which is more liberal, shall be followed.

Besaille, Besaile, Besayle. A father of a grandfather. A writ that lay for one who was entitled as heir to enter upon the lands of a deceased great-grandfather, against a stranger who had wrongly entered into possession of the lands. Now abolished. See *Mort d'ancestor*.

Bestes. Beasts; game.

Bigamus. A person married to two women; a person guilty of the offence of bigamy.

Bigamus seu trigamus etc., est qui diversis temporibus et successivè duas seu tres uxores habuit. A bigamus or trigamus, &c., is one who at different times and successively has married two or three wives.

Bilinguis. One who uses two tongues or languages; a jury, part Englishmen and part foreigners, who used to try a foreigner for a crime.

Billa nundinales. Fair or market bills.

Billa vera. A true bill found by a grand jury. See *Ignoramus*.

Bipartite. Of two parts.

Bis idem exigi bona fides non partitur; et in satisfactionibus, non permittitur amplius fieri quam semel factum est. Good faith does not suffer the same thing to be exacted twice, and in giving damages, it is not allowed to give more than is given at once. See *Bonâ fides non...*

Bona. Goods; property; in a wider sense it

includes all sort of property whether moveable or unmoveable.

Bona confiscata. Property confiscated or forfeited for crime to the *fiscus* or public treasury.

Bonâ fidei non convenit de apicibus juris disputari. It is not suitable to good faith to dispute about the niceties of law. See *Nimia subtilitas...*

Bonâ fidei possessor, in id tantum quod ad se pervenerit, tenetur. A tenant is bound to good faith in that only which may come to him. A possessor in good faith is only liable for that which he himself has obtained.

Bonâ fidei venditorem nec commodorum spem augere, nec incommodorum conditionem obscurare oportet. It behoves a vendor, possessed of integrity, neither to increase the expectation of benefits, nor to conceal the condition of disadvantages. See *Aliud est celare...* Also the Trans. of Pro. Act IV of 1882, s. 55, cl. 1 (a) and (c).

Bona et catalla. Goods and chattels.

Bona felonum, fugitivorum et utlagatorum. The goods of felons, fugitives and outlaws.

Bonâ fide. With good faith; without fraud, implying the absence of all unfair dealing or acting whether it consists in simulation or dissimulation. A *bonâ fide* holder of property means one who has no notice of any defect attaching to it.

Bonâ fide asportavit. He carried away his goods without fraud.

Bonâ fide possessor facit fructus consumptos suos. A *bonâ fide* possessor makes the profits which have been consumed his own.

Bonâ fides non patitur ut bis idem exigatur; et in satisfactionibus non permittitur amplius fieri quam semel factum est. Good faith allows not that the same thing should be twice exacted; and in giving damages it is not allowed to give more than is given at once. See *In satisfactionibus.....Nemo debet bis vexari...*

Bonâ fides tantundem possidenti præstat quantum veritas, quoties lex impedimento non est. Good faith gives the possessor the same rights as a valid title, unless the law prevents it.

Bona forisfacta. Goods forfeited. Also called *bona confiscata*.

Bona fugitiva. Fugitive's goods. The goods of a felon which he abandons in his flight from justice.

Bona gestura. Good behaviour. See *Bonus gestus*.

Bona mobilia. Moveable effects and goods.

Bona notabilia. Notable goods; as bonds, specialties, bills of exchange, &c.; goods sufficient in amount to require a probate or administration to be taken out under ecclesiastical law.

Bona patria. An assise of countrymen or good neighbours; sometimes called *assisa bonæ patriæ*, when twelve or more men are chosen out of any part of the country to

pass upon an assize. The persons composing it are called *juratores*.

Bona peritura. Perishable goods.

Bona vacantia. Stray goods; free goods. Those things in which nobody claims a property, and which belong to the Crown by virtue of its prerogative. See *Res nullius*.

Bona raviata. Goods stolen and thrown away (or dropped) by a thief in his flight for fear of being apprehended.

Boni homines. Good men.

Boni judicis est ampliare justitiam (or *jurisdictionem*). It is the duty of a good judge to extend the limits of his justice or jurisdiction; i. e., to amplify the remedies of the law, and, without usurping jurisdiction, to apply its rules to the advancement of substantial justice.

The maxim does not mean that a judge is ever at liberty to exceed his jurisdiction. It means that a good judge should amplify the remedy given by the law so as, in the most perfect manner, to do the most complete justice, not letting substantial justice to be frittered away by nice technicalities, or himself lay hold of such technicalities as a means of avoiding giving decision according to the very right in broad and substantial justice. See *Lex deficere... Nimia subtilitas...*

The old form of action for money had and received is peculiarly illustrative of the principle here set forth; the foundation of this action being that the plaintiff is in conscience entitled to the money sought to be recovered; and it has been observed that this kind of equitable action to recover back money which ought not in justice to be kept is very beneficial, and therefore much encouraged. It lies only for money which *ex æquo et bono*, the defendant ought to refund. See ss. 88 to 93 of the Indian Trusts Act II of 1882, and ss. 68 to 72 of the Indian Contract Act IX of 1872. When money has been received without consideration or upon a consideration that has failed, the recipient holds it, *ex æquo et bono*, for the plaintiff (*Martin v. Andrews*, 7 E. and B. 1). See s. 65 of the Ind. Con. Act IX of 1872.

The power of directing amendments of the record, and dispensing with forms as to which judges enjoy a wide discretion may likewise be instanced as one which is confided to them by the legislature in order that it may be applied to the advancement of substantial justice. But discretion means sound discretion guided by law. It must be governed by rule, not by humour. It must not be arbitrary, vague and fanciful, but legal and regular (*R. v. Wilkes*, 2 Burr. 25). Compare s. 22 of the Specific Relief Act I of 1877.

Boni judicis est causas litum dirimere et interest reipublicæ ut sit finis litium. It is the duty of a good judge to take away the occasions of litigation; and it concerns the State to end law suits. See *Interest reipublicæ ut sit...*

Boni judicis est judicium sine dilatione mandare executioni. It is the duty of a good judge to commit judgment to execution without delay. See *Executio est fructus...*

Bonis arrestandis. See *Arrestandis bonis...*

Bonis asportatis. Writ *de bonis asportatis*; a writ of trespass for the wrongful taking of chattels.

Bonis non amovendis. That the goods be not removed. A writ addressed to the sheriff, where error is brought, commanding that the person against whom judgment is obtained be not suffered to remove his goods till the error be tried and determined.

Bono et malo. Writ *de bono et malo*; an abolished writ of gaol delivery which was issued for each particular prisoner.

Bonorum possessio. This was, in Roman Law, that possession which the praetor conferred by virtue of his edict.

Bonum defendentis ex integra causa, malum ex quolibet defectu. The good of a defendant arises from a perfect case, his harm from any defect whatever.

Bonum necessarium extra terminos necessitatis non est bonum. Necessary good is not good beyond the bounds of necessity. For example, and easement of necessity is co-extensive with the necessity as it existed when the easement was imposed, and is extinguished when the necessity comes to an end (*Ind. Ease. Act V of 1882, ss. 28 and 41*).

Bonum publicum. Common or public good. Public welfare.

Bonus. Premium or advantage; an occasional extra dividend; a gratuity; good.

Bonus gestus. Good behaviour. It signifies an exact carriage or behaviour of a subject towards the king and the people, whereunto some persons upon their misbehaviour are bound. See the Code of Crim. Pro. V of 1898, ss. 106 to 110.

Bonus judex secundum æquum et bonum judicat, et æquitatem stricto juri præfert. A good judge decides according to what is just and good, and prefers equity to strict law.

In deciding a case, in the absence of specific law and usage, according to justice, equity, and good conscience, courts should be guided by the principles of English law applicable to a similar state of circumstances (*Webbe v. Lester*, 2 Bom. H. C., A. C. 52; *Dada Honaji v. Babaji Jajusket*, 2 Bom. H. C., A. C., 36; *Mussoorie Bank Ltd. v. Himalaya Bank*, 16 All. 53; *Abdul Hye v. Mir Mahomed*, 10 Cal. 616; L. R. 11 I. A. 10).

See *Boni judicis est ampliare...*

Borge, Borge. A pledge.

Bote. Amends; recompense. As *man bote*, a compensation or amend for a man slain. Also wood cut off a farm, by the tenant, for the uses thereof, and for other necessities, such as *house-bote, fire-bote, plough-bote, cart-bote, hedge-bote*.

Breve. A writ by which a person is summoned or attached to answer an action, or whereby anything is commanded to be done. It is called *breve* from the brevity of it and is addressed to the defendant, or to the Chancellors, Judges, Sheriffs or other officers.

Breve a' l'evesque. A writ to the bishop which, in *quare impedit*, shall go to remove an incumbent, unless he recover judgment or be presented *pendente lite*.

Breve de recto. A writ of right or license for a person ejected out of an estate to sue for the possession of it. A writ of a high nature that aimed to recover the seisin and the property, and whereby both the rights of possession and property were tried together.

Breve essendi quieti de theolonio. See *De essendo*...

Breve ita dicitur, quia rem de qua agitur, et intentionem petentis, paucis verbis breviter enarrat. A writ is so called because it briefly states, in few words, the matter in dispute, and the object of the party seeking relief.

Breve judiciale debet sequi suum originale, et accessorium suum principale. A judicial writ ought to follow its original, and an accessory its principal.

Breve judiciale non cadit pro defecto forme. A judicial writ fails not through defect of form.

Breve originale. Original writ, being the beginning or foundation of a real action at common law.

Breve perquirere. To purchase a writ or license of trial in the king's courts.

Brevet d'invention. (Fr.) A patent for an invention.

Brevia anticipantia. Writs of prevention at common law, for the purpose of preventing an anticipated injury. These writs have long been superseded by injunctions in equity.

Brevia formata. Formed writs,

Brevia magistralia. Magisterial or official writs framed by the clerks in Chancery to meet new inquiries, to which the old forms of actions were inapplicable.

Brevia selecta. Choice writs or processes. Abbrev. *Brev. Sel.*

Brevia, tam originalia quam judicialia, patiuntur Anglica nomina. Writs, as well original as judicial, bear English names.

Brevia testata. Attested writs. Written memoranda (of which our modern deeds are nothing more than amplifications) introduced to perpetuate the tenors of the various conveyances and investitures, when grants by parol had become the foundation of frequent dispute and uncertainty. The names of the witnesses were registered in the deed without their own signatures (writing not being then a general accomplishment), for they merely heard the deed read.

Brevibus et rotulis liberandis. A writ or mandate directed to an outgoing sheriff to deliver unto the new sheriff, chosen in his room, the county with the appurtenances *una cum rotulis, brevibus, &c., i. e.,* with the rolls, writs and all other things belonging to that office.

Brevi manu. With a short hand; quickly; without the slightest delay.

Brutum fulmen. A harmless, insignificant thunderbolt. A loud but ineffectual menace or threat. Full of sound and signifying nothing. A law which is neither respected nor obeyed.

Bullio salis. As much salt as is made at one *wealing*, or boiling; a twelve gallon measure of salt.

Burgi latrocinium. The robbing of a castle; burglary.

Burglariter. Burglariously. A word used in indictments for burglary.

Bursa decrementum. Decrease of money.

Busones comitatus. The barons of the county.

C

Cadit questio. The question falls to the ground. There's an end to the argument.

Calangium. A challenge; claim; dispute.

Calumnia. A malicious prosecution.

Cambium sicum. Dry exchange. A term invented in former times for the disguising and covering of usury, in which something was pretended to pass on both sides, whereas in truth nothing passed but on one side, in which respect it was called *dry*.

Camera. The judge's private room behind the Court. Cases are sometimes heard there by him, especially in divorce matters. Judge's chamber.

Camera regia. Chambers of the king. See

Regia camera.

Camera Scaccaria. The Exchequer Chamber.

Camera Stellata. The Star Chamber. A court originally created to prevent the obstruction of justice by the inferior courts by undue influence. It consisted of the Privy Council, the common law Judges, and peers of Parliament. Now abolished.

Campartum. A part of a large field or ground.

Campestress. Belonging to a field.

Campio regis. Champion of the king; an ancient officer whose office it is, at the coronation of the kings, to ride armed *cap-à-pie* into Westminster Hall, and by the proclamation of a herald to make a challenge, that if any man shall deny the king's title to the crown, he is there ready to defend it in single combat, &c.

Campi partitio. Champerty. A division of soil.

Cancellaria curia. The ancient denomination of the Court of Chancery.

Cancellarius Anglica dignitas est, ut securus à rege in regno habetur. The dignity of the

Chancellor of England is, that he is deemed the second from the Sovereign in the kingdom.

Cancellarius. A Chancellor; the Lord Chancellor.

Cancelli. Lattice-work. The rails enclosing the bar of a court of justice. Hence the word *cancellarius*, which originally signified a porter who stood at the latticed or grated door of the emperor's palace. From this word has come the modern "Chancellor."

Canon. An annual impost in money or kind. A catalogue of sacred writings.

Canonica sanctio. *Canonum jura*. Canon law.

Cap-à-pie. (Fr.) From head to foot; all over; as armed *cap-à-pie*.

Capax doli. See *Doli capax*.

Cape. A judicial writ formerly used in real actions for the recovery of lands or tenements, divided into *cape magnum* or the grand *cape*, which lay before the appearance to summon the tenant to answer the default; the *cape ad valentiam* was a species of grand *cape*; and *cape parvum* or *petit cape*, issued when the tenant after appearance or view granted, made default, summoning the tenant to answer the default only.

Cape ad valentiam. A species of *cape magnum* awarded against one who had warranted the title of a defendant to lands sought to be recovered from him in a real action, and who, on being summoned to justify his warranty, failed to appear, so that the plaintiff or demandant recovered possession. The writ lay to recover land of the same value belonging to the "vouchee" or person summoned.

Capias. That you take. The writ of *capias* was a writ directing the sheriff to take the body of the defendant, as a means of commencing an action at Common Law which was abolished and a new writ 'capias on mesne process' or 'bailable process' introduced in cases where the debtor was about to quit the country and where the debt exceeded a fixed amount.

Capias ad audiendum judicium. That you take to hear judgment. A writ issued in cases where a defendant has, in his absence, been found guilty of misdemeanour, to bring him in to receive judgment.

Capias ad computandum de novo. That you take to account anew.

Capias ad respondendum. That you take to answer. A writ granted against the defendant's person when he neglected to appear upon the former process of attachment or was obliged to give special bail, subjecting his person to imprisonment.

Capias ad satisfaciendum. That you take to satisfy. Generally called a *ca. sa.* A writ by which on a judgment execution might issue against the person of the debtor, who might be arrested and imprisoned thereunder. It differed from *capias ad respondendum* which lay to compel an appearance

of the defendant at the beginning of a suit.

Capias extendi facias. See *Extendi facias*.

Capias in withernam. That you take by way of reprisals; formerly issued for taking the goods of a person who having distrained goods and being ordered to deliver them up on a proper security being given caused them instead to be eloiigned or taken out of the sheriff's jurisdiction or to places to him unknown, so that the sheriff cannot replevy them. See *Elongatus*.

Capias pro fine. That you take for the fine. A writ issued upon judgment given for the plaintiff in an action, directing that the defendant be taken up (*capiatur*) till he paid a fine to the king for the public misdemeanour coupled with the private injury in cases of force, falsehood, unjustly claiming property in replevin, &c.

Capias, si laicus. That you take, if a layman.

Capias utlagatum. That you take the outlaw. This writ is either general, against the person only; or special, against the person, lands and goods.

Capiatur. That he be taken.

Capita. Heads. Distribution *per capita* happens when all the claimants claim in their own right in equal degree of kindred, and not *jure representationis* or *per stirpes*, in the right of another person. For example, if A dies leaving three sons B, C & D, they take his property in equal shares, *per capita*, *i. e.*, in their own right. But if B has died during the lifetime of A, leaving two sons E and F, these latter will take *per stirpes*, *i. e.*, through the right of their father B; so that E and F, will together take one-third; C, one-third; and D one-third, of the property of A. In the same manner daughters' sons, under Hindu Law, take *per capita*, and not *per stirpes*, because they do not claim the property of their mothers' father, through their mothers, but in their own right, and the sons of all the daughters will take equally.

Capitali domino accipitare. To pay a relief, homage, or obedience to the chief lord on becoming his vassal.

Capitalis justiciarius. Chief justice.

Capitalis plegius. Chief pledge.

Capite. Tenants *in capite* were those who held lands immediately from the king in right of his Crown.

Capitis diminutio. The change of a man's social standing.

Capit qui capere potest. Let him take who can take.

Caput anni. The first day of the year.

Caput baronia. The castle or chief seat of a nobleman, which if there be no son, must not be divided amongst the daughters as in the case of lands, but descends to the eldest daughter.

Caput loci. The head or upper end of any place; *ad caput villa*, at the end of the town.

Caput lupinum. A wolf's head. An outlawed felon was said to be *caput lupinum*, and might be knocked on the head, like a wolf. See *Lupinum*...

Caput mortuum. Dead; obsolete.

Carcenum. A prison.

Carcer ad homines custodiendos non ad puniendos, dari debet. A prison ought to be given for the custody, not the punishment of persons.

Carcer non supplicii causa sed custodia constitutus. A prison is ordained not for the sake of punishment, but of ward.

Carnaliter cognovit. He obtained carnal knowledge of her. He had intercourse with her.

Carrucarum apparura. Plough tackle, or all the implements belonging to a plough.

Carta. See *Charta*.

Carte blanche. A white or blank card; a free permission. A paper given by one man to another with nothing on it but the signature of the former, so that the latter may fill it up at his discretion. Hence the expression to give any one *carte blanche*, means to give him unlimited authority.

Caruca. A plough.

Caruca averia. Beasts of the plough.

Cassetur billa (or breve). That the bill or writ be quashed. On a plea of abatement being pleaded, the plaintiff may enter a *cassetur breve*, and abandon his action, to the intent that he might sue out a better writ.

Cassum facere. To quash, make void, or annul.

Castellarium. The jurisdiction of a castle.

Castellarum operatio. Castle-work or service required by lords of their tenants for the repairing or rebuilding of their castles.

Casu consimili. In a like case. A writ which lay for a reversioner to recover land which a tenant for life or other limited interest, not being a tenant in dower, had attempted to dispose of for a greater estate than that which he held in the land. It was so called because it was a case like to that which formed the subject of the writ in *casu proviso*. Now abolished.

Casu proviso. A writ which lay for the reversioner of land which a tenant in dower of the land had disposed of in fee or for some other greater estate than that which he held in the land. Now abolished.

Casus belli. An occurrence giving rise to or justifying war. A plea for war.

Casus federis. A case stipulated by treaty, or which comes within the terms of a compact.

Casus fortuitus non est sperandus. A fortuitous event is not to be foreseen.

Casus interventionis. A case calling for intervention; a plea for interference.

Casus necessitatis. A case of necessity or desperate extremity.

Casus omissus. A point omitted or unprovided for by statute; an opportunity neglected; as opposed to *casus provisos*.

Casus omissus et oblivioni datus dispositio i communis juris relinquitur. A case unprovided for in a statute and given to oblivion must be disposed of according to common law. See *Ad ea quæ*...

Casus omissus habetur pro amisso. A case omitted is deemed as lost.

Casus provisos. A case for which provision has been made. See *Casus omissus*.

Catalla. Chattels; cattle.

Catalla iuste possessa amitti non possunt. Chattels justly possessed cannot be lost.

Catalla otiosa. Dead goods; chattels.

Catalla reputantur inter minima in lege. Chattels are considered in law among the least things.

Catalla utlagatorum et felonum de se. Chattels of outlaws and suicides.

Catallis captis nomine distractionis. An obsolete writ which lay for rent of a house within a borough, and which warranted the taking of doors, windows, &c., by way of distress.

Catallis reddendis. An obsolete writ that lay where goods delivered to a man to keep till a certain day were not upon demand re-delivered at the day. It might otherwise be called a writ of *detinuit*. It answered to the *actio depositi* of the Roman Law.

Catoniana regula. This was a rule in Roman Law, which is commonly expressed in the maxim *Quod ab initio*...which see.

Causa. A cause; judicial process; suit. Evidence in *causa* means evidence that is relevant and pertinent to the issue, and not collateral or irrelevant, which is called *extra causam*.

Causa adulterii. On account of adultery.

Causa causans. The efficient cause; the immediate cause.

Causa de remover plea. Cause of removing a plea.

Causæ celebres. Celebrated cases.

Causæ dotis, vitæ, libertatis, fisci, sunt inter favorabilia in lege. Causes of dowers, life, liberty, and revenue are among the things favoured in law. See *In dubio pro dote*...

Causæ iustæ. Legal grounds.

Causa et origo est materia negotii. Cause and origin is the material of business. The cause and beginning is the matter of the business. Every man has a right to enter into a tavern, and every lord to distrain his tenant's beasts; but if in the former case a riot ensues or if in the latter the landlord kills the distress, the law will infer that they entered for these purposes and deem them trespassers from the beginning (*ab initio*).

Causa frigidatus. By reason of impotency.

Causa jactitationis matrimonii. By reason of a vain boasting of marriage. When one

of two parties had falsely boasted or given out that he or she was married to the other, the other took proceedings in the Ecclesiastical Court to enjoin perpetual silence on that head.

Causâ matrimonii prælocuti. By reason of a marriage before mentioned. A writ which lay where a woman gave lands to a man in fee simple, &c., to the intent that he should marry her and he refused to do so in any reasonable time.

Causam nobis significes quare. That you signify the cause to us. An old writ which lay against a mayor of a town or city, who, having by the king's writ been commanded to give possession of land into the king's grantee, delayed to do so. The writ called upon him to show cause why he so delayed the performance of his charge.

Causâ mortis. In prospect of death. See *Donatio mortis...*

Causâ precontractus. By reason of a precontract. See *Precontractus.*

Causa proxima. The same as *causa causans.*

Causa proxima et non remota spectatur. The immediate, and not the remote cause of an event is to be regarded. See *In jure, non remota...*

Causa publica. A public action.

Causa vagu et incerta non est causa rationabilis. A vague and uncertain cause is not a reasonable cause.

Causa venationis. For the purpose of hunting.

Cautio. A security bond or warranty against some possible loss, or some possible failure of the party; bail.

Cautione admittenda. A writ that lay against a bishop who kept an excommunicated person in prison for his contempt, notwithstanding that he offered sufficient caution or pledges to obey the commandments and orders of holy church from henceforth.

Cautio pro expensis. Security for costs.

Caveat. That he take heed. A warning or caution. It is entered to prevent the issuing of a lunacy commission, or to stay the probate of a will, letters of administration, a license of marriage or the institution of a clerk to a benefice. An intimation made to the proper officer of Court of justice to prevent the taking of any step without intimation to the party interested to appear and object to it.

Caveat actor. Let the doer take heed. Let him look to the consequences of his own act.

Caveat creditor. Let the creditor beware. If a landlord gives his acquittance to his tenant for the rent which is last due, the presumption is that all the previous rent in arrear has been duly discharged.

Caveat emptor. That the purchaser take heed.

Caveat emptor; qui ignorare non debuit quod jus alienum emit. Let a purchaser beware; who ought not to be ignorant that he is purchasing the rights of another.

If a man purchase the goods of a tradesman, without, in any way, relying upon the skill and judgment of the vendor, the latter is not responsible for their turning out contrary to his expectation. The maxim implies that the buyer must be cautious, as the risk is his and not that of the seller. The rule of law as to the sale of goods is, that if a person sells goods and chattels as his own, and the price be paid, and the title prove deficient, the seller may be compelled to refund the money. But as to the soundness of the wares, the vendor is not bound to answer, unless, knowing them to be faulty, he expressed them as sound, or expressly warranted them.

As a general rule, there is no warranty of quality arising from the bare contract of sale of goods, and where there has been no fraud, a buyer who has not obtained an express warranty, takes all risk of defect in the goods, unless there are circumstances beyond the mere fact of sale from which a warranty may be implied. See ss. 109 to 116 of the Indian Contract Act IX of 1872.

Mere praise of the goods will not amount to a warranty. See *Ea qua commendandi...*

By the Civil Law, every man is bound to warrant the thing that he sells or conveys, albeit there be no express warranty; but the common law binds him not unless there be a warranty either in deed or in law; for "let a purchaser exercise proper caution, who ought not to be ignorant of the amount and nature of the interest which he is about to buy." As the maxim applies with certain specific restrictions, not only to the quality of but also to the title to land which is sold, the purchaser is generally bound to view the land and to inquire after and inspect the title deeds at his peril if he does not. But if the seller is guilty of any unfair practices in inducing the buyer to enter into the contract, specific performance of such contract can be resisted or rescission of such contract obtained, not only where it has been effected through fraud, but also where it has been brought about by a material misrepresentation of the vendor or his authorized agents (*Redgrave v. Hurd*, 20 Ch. D. 1; 51 L. J. Ch. 113). See s. 28 of the Specific Relief Act I of 1877. The maxim also applies to sales in execution of a decree when there is no fraud or misrepresentation on the part of the decree holder (*Hira Lal v. Karimunnissa*, 2 All. 780; *Ram Narayn Singh v. Mahatab Bibi*, 2 All. 828; *Sowdamini Chowdrain v. Krishna Kishore Poddar*, 4 B. L. R., F. B., 11; *Dhondu Mathuradas Naik v. Ramji valad Hanumanta*, 4 Bom. H. C., A. C., 114; *Kelly v. Seth Gobind Dass*, 6 N. W.

P. 168; *Sheikh Mahomed Baseralla v. Sheikh Abdulla*, 4 B. L. R. Ap. 35).

An unpaid vendor of a house or other building, who retains possession until completion of the sale, is not answerable to the purchaser, if in the interval the building be damaged or destroyed by accidental fire; the loss must fall upon the purchaser (*Paine v. Miller*, 6 Ves. 849; 5 R. R. 327). But s. 54 of the Transfer of Property Act IV of 1882 states that a contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties; it does not of itself create any interest in or charge on such property. This leads to a supposition that as the purchaser, by a mere contract does not acquire any interest in the property, he is not also responsible for the loss occurring before the sale is completed so as to create an interest in his favour. In the case of goods, in the absence of any agreement to the contrary, the loss usually falls on the buyer or on the seller according as the property in the goods has or has not passed. See s. 86 of the Indian Contract Act IX of 1872.

Although the buyer of goods bought from a seller who had no title to sell then may have remedies against the seller, yet as a rule, the sale gives him no title to the goods as against the owner, and as between the buyer and the owner the maxim *caveat emptor* applies, unless the latter be guilty of fraud in the matter. There are, however, some exceptions to this rule, for which see *Assignatus utitur*...

A, a Hindu, subject to the Mitakshara law, sold his right and interest in the undivided ancestral estate of his family without the consent of his co-sharers and not for the benefit of the estate but in order to pay off a personal debt. The sale was by auction to an innocent purchaser for value. *Held*, that in a suit brought within twelve years from the date on which the purchaser obtained possession, the sons and grandsons of A, deceased, were entitled to recover possession, without making any refund of the purchase money (*Nathu Lal Chowdhry v. Chadi Sahi*, 4 B. L. R., A. C., 115; *Rajan v. Basuwa*, 2 Mad. H. C. R. 428).

Caveat venditor. Let the seller beware.

Caveat viator. Let the traveller beware. This applies where gratuitous permission is given to persons to pass over private land, who must take the risk of accident arising from negligence of the owner. Suppose there is an enclosed yard with several dangerous holes in it, and the owner allows the public to go through the yard, the law does not cast on him any obligation to fill up the holes, because under such circumstances *caveat viator*. But the maxim does not apply where the place is a public place which any man can enter, such as a shop or a public inn, in which case the owner impliedly invites the public to the place

and is consequently bound to look to the safety of the customers.

Cavendum est ne major poena, quam culpa, sit; et ne visdem de causis alii plerantur, alii ne appellentur quidem. Care should be taken that the punishment do not exceed the guilt; and that some men may not suffer for offences which, when committed by others, are allowed to pass with impunity.

Celles que trusts. Those trusts entitled to the purchase-money, after payment of debts.

Censarii. Farmers.

Census regalis. The annual income or revenue of the Crown.

Centesima. Interest at one per cent. per month, or at twelve per cent. per annum.

Cepi corpus et paratum habeo. I have taken the body, and have it ready. A return made by the sheriff upon an attachment, *capias*, &c., where he has the person, against whom the process was issued, in custody.

Cepit et asportavit. He took and carried away.

Cepit in alio loco. He has taken in another place. A plea in replevin, when the defendant took the goods in another place than that mentioned in the declaration.

Certa debet esse intentio, et narratio, et certum fundamentum, et certa res que deducitur in judicium. The design and narration ought to be certain, and the foundation certain, and the matter certain, which is brought into Court to be tried.

Certificando de recognitione stapulae. A writ commanding the mayor of the staple to certify to the Lord Chancellor a statute-staple taken before him where the party himself detains it, and refuses to bring in the same. There was a like writ to certify a statute-merchant, and in divers other cases.

Certiorari. To be certified of; to be more fully informed of. A writ commanding an inferior Court to certify an indictment or other proceeding to a superior Court with the view to its removal thither for trial. An indictment against a peer for felony is removed into parliament by a writ of *certiorari*. An indictment may be removed from an inferior Court to the Court of Queen's Bench by writ of *certiorari*. Bill of *certiorari* in Chancery is a bill praying for the removal into the Court of Chancery of a suit instituted in an inferior Court.

Certiorari ad informandum conscientiam. To certify, to inform the conscience.

Certiorari quare executionem non. To certify why he hath not execution.

Certum est quod certum reddi potest. That is certain which can be rendered certain.

Agreements the meaning of which is not certain, or capable of being made certain are void (*Ind. Con. Act IX of 1872, s. 29*), for, *incerta pro nullius habentur*. A will or bequest not expressive of any definite intention is void for uncertainty (*Ind. Suc*

Act X of 1855, s. 76). If a man make a lease for so many years as J. shall name, this is a good lease for years; for though it is at present uncertain, yet when J. hath named the years, it is reduced to a certainty. Again if a lease be granted for 21 years, after three lives in being; though it is uncertain at first when that term will commence, because those lives are in being, yet, when they die it is reduced to certainty. For, although there must be a certainty in the lease as to the commencement and duration of the term, yet that certainty need not be ascertained at the time; for if, in the efflux of time, a day will arrive which will make it certain, that is sufficient (*Goodright v. Richardson*, 3 T. R. 463). But where an executory agreement for a lease did not mention the date from which the lease was to commence, it was held that it was not to be inferred that it was to commence from the date of the agreement, in the absence of language pointing to that conclusion (*Marshall v. Berridge*, 19 Ch. D. 233). So where an agreement for sale did not describe the house but stated that the deeds were in the possession of A, *held*, that the agreement was sufficiently certain, since it appeared that the house contemplated was the house of which the title-deeds were in the possession of A (*Owen v. Thomas*, 3 My. & K. 353; *Plant v. Bourne* 1897, 2 Ch. 281; 64 L. J. Ch. 648). Where, by a contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time, which is, in each particular case a question of fact (*Ind. Con. Act IX of 1872, s. 46*; *Juggun Nath v. Beke*, 2 N.-W. P. 60).

An obligor passed a bond to a banker in these words:—"To secure this money, I pledge..... my wealth and property in favour of the said banker. Whatever property &c. belonging to me be found by the said banker, that all should be available to the said banker. If, without discharging the debt due to this banker, I should sell, mortgage, or dispose of the property to another banker, such transfer shall be void. *Held*, that the words used in the bond as indicating the property which was intended to be subject to the charge were sufficiently specific and certain to include, and were intended to include, all the property of the obligor; that this being so, the maxim *certum est quod certum reddi potest* applied and that the bond created a valid charge (*Ramsidh Pande v. Balgobind*, 9 All. 158).

A, to whom the Government had made a grant of certain villages, executed an instrument in favour of his brother charging the payment of an annual allowans to him and his heirs for ever on the "granted villages." The instrument did not name the villages which had been granted to A, but there was no doubt as to the particular villages which had been granted to him. *Held*, that the fact that such instrument did not specify the villages which had

been granted to A did not constitute such an ambiguity in such instrument as to render the charge created thereby invalid (*Kanhia Lal v. Mohammed*, 5 All. 11, following *Rai Manik Chand v. Beharee Lal*, N.-W. P., 1870, p. 263, and distinguishing *Deojit v. Pitambar*, 1 All 275).

A deed of simple mortgage described the mortgaged property as "our Zemindari property" and gave no further specification or description. It was proved that at the date of the mortgage the mortgagors had a definite and ascertained fractional share in two Zemindaris. *Held* that the words "our Zemindari property" were sufficiently certain or at any rate capable of being made certain by the proof of the mortgagors being, at the date of the mortgage-deed, the owners of a specific Zemindari interest, and that the mortgage was therefore not void for uncertainty (*Shadi Lal v. Thakur*, 12 All. 175; referring to *Kanhia Lal v. Muhammad*, 5 All. 11; *Bishen Dayal v. Udit Narain*, 8 All. 406; *Ramsidh Pande v. Bal Gobind*, 9 All. 158; *Rai Manik Chand v. Behari Lal*, N. W. P., 1870, p. 263; *Deojit v. Pitambar*, 1 All. 275; *Tailby v. The Official Receiver*, L. R. 3 App. Cas. 523; and *Tadman v. D'Epineuil*, L. R. 20 Ch. D. 758).

But as it is essential for a valid mortgage that there must be specific property, it has been held that where a person stipulates generally not to alienate his property he does not thereby create a charge on any particular property belonging to him (*Bhupal v. Jag Ram*, 2 All. 449; *Deojit v. Pitambar*, 1, All. 275; *Gunoo Singh v. Latafut Hossain*, 3 Cal. 336; 1 C. L. R. 91; *Najibulla v. Nasir Mistri*, 7 Cal. 196; 8 C. L. R. 454; *Bheri Dorayya v. Maddipatu*, 3 Mad. 35).

A testator left a legacy (Rs. 2000) to his wife, directing that "interest should be paid her every year. If in her lifetime she demands the money to use in good works (sarā kām), it should be given to her, but if she has not taken it during her life time, J and B are to dispose of it according to their own pleasure after death." *Held*, that this was not a bequest in favour of good works (sarā kām), but a bequest to the testator's wife, with a direction to use it in good works, and as that direction was void for uncertainty, she was entitled to the money as if the will had contained no such direction (*Bai Bapi v. Jannadas Hathising*, 22 Bom. 774; *Ind. Suc. Act X of 1865, s. 125*).

Held, that the plaintiff was not entitled to recover enhanced interest under a stipulation contained in an agreement, because that part of the agreement was void for uncertainty (*Asan Kuthu Sahib v. Ramanathan Chetti*, 22 Mad. 26).

A custom ought to be certain, for an uncertain custom is considered null. See *Consuetudo debet esse... Optimus interpret...*

As to the admission of extraneous evidence for removing an uncertainty, see *Ambiguitas verborum....*

Cessante ratione cessat effectus, or *Cesante causa cessat et effectus*. The cause ceasing, the effect ceases. Thus, the release of a debt is a discharge also of the execution.

Cessante ratione legis, cessat et ipsa lex. The reason of the law ceasing, the law itself ceases.

Where trees are excepted out of a demise the soil itself is not excepted, but sufficient nutriment out of the land reserved to sustain the trees, for without that the trees cannot subsist; but if the lessor fells the trees, then according to this rule, the lessee shall have the soil (*Lidford's Case*, 11 Rep. 49). Again an easement of necessity is extinguished when the necessity comes to an end. For example, *A* grants *B* a field inaccessible except by passing over *A*'s adjoining land. *B* has a right of way over such adjoining land of *A*. But if *B* afterwards purchases a part of the land over which he can pass to his field, the right of way over *A*'s land which *B* had acquired is extinguished (*Ind. Ease. Act V of 1882, s. 41*). Under s. 642 of the Civ. Code XIV of 1882, no judge, magistrate or other judicial officer can be arrested under civil process while going to, presiding in, or returning from, his court, and with certain exceptions, the same privilege is enjoyed by the parties to a suit pending in court, their pleaders, mukhtars, revenue agents, recognized agents and their witnesses acting in obedience to a summons, while going to, or attending such tribunal for the purposes of such matter, and while returning from such tribunal. The reason of this privilege is that they are performing a public duty, and if they are arrested while on such duty, the course of justice will be thereby impeded. But as soon as this privilege expires, the parties are liable to arrest, for the public has then no longer an immediate interest in the personal freedom of the individuals.

Cessante statu primitivo, cessat derivativus. The original estate ceasing, the derived estate also ceases. The rule may be illustrated by the case of a demise for years by a tenant for life, or by any person having a particular or defeasible estate. Such demise unless confirmed by the remainderman or reversioner, or authorized by statute, will determine on the death of the lessor.

The same principle applies whenever the original estate determines according to the express terms or nature of its limitation, or is defeated by a condition in consequence of the act of the party. For example, a demise by a widow, who has the estate *durante viduitate* (during her widowhood) determines on the re-marriage of the widow. See *Accessorium non ducit... Assignatus utitur... Nemo plus juris...*

Cessavit. A writ that formerly lay to recover land against a tenant who had for two years neglected to perform the service or pay the rent, which he was bound by his tenure to do or pay, and had not upon his land or tenement sufficient goods or

chattels to be distrained. It also lay where a religious house, having lands given to it on condition of performing some certain spiritual service, as reading prayers or giving alms, neglected it.

Cesset executio. That the execution stand aside or cease. Thus on a judgment in favour of a party in respect of a reversion claimed by him at the expiry of a lease, there must be a *cesset executio* during the continuance of the lease.

Cesset processus. That the proceeding cease. Let the process be stayed. An order to stay proceedings in an action.

Cessio bonorum. (Sc. L.) A surrendering or yielding up by a debtor of his goods to his creditors. In French Law this is called *cession des biens*.

Cessio in jure. A species of conveyance in Roman Law, by way of a fictitious suit, in which the person who was to acquire the thing claimed (*vindicabat*) the thing, the person who was to transfer it acknowledged the justice of the claim, and the magistrate pronounced it to be the property (*addicebat*) of the claimant.

C'est le crime qui fait la honte, et non pas l'échafaud. It is the offence which produces shame, and not the scaffold.

Cestui que trust. A person to whose use or benefit another is invested or seized of lands or tenements; a beneficiary.

Cestui que use. The person for whose benefit a use is created.

Cestui que vie. A person for whose life, lands or tenements are granted. Thus, if *A* be tenant of lands for the life of *B*, *B* is called the *cestui que vie*.

Chaccare ad lapores vel vulpes. To hunt hares or foxes.

Chargé d'affaires. A diplomatic representative at a foreign court, to whose care are confided the affairs of his nation.

Charta. Carta. A writing; a letter; a charter for holding an estate; a statute.

Charta (carta) de foresta. A forest charter confirmed in Parliament in the ninth year of Henry III, by which many forests unlawfully made were disafforested, so as to remit to the former owners their right, while in others many abuses were reformed or mitigated.

Charta de non ente non valet. A charter concerning a thing not in existence avails not. See the Trans. of Pro. Act IV of 1882, s. 6 (a) and (b), and the Ind. Con. Act IX of 1872, ss. 87 and 88.

Charta de una parte. A deed-poll; a writing by one party only, in the form of a manifesto or declaration. It begins with the words "Know all men..."

Charta libertatum. The charters of liberty. See *Magna Charta*.

Charta magna. See *Magna Charta*.

Charta est legatus mentis. A charter is the representation of the mind.

Charta non est nisi vestimentum donationis. A charter is nothing else than the vestment of a gift.

Charta partita. A deed or writing divided; a charter party.

Chartarum super fidem mortuis testibus ad patriam de necessitudine recurrendum est. The witnesses being dead, the truth of charters must of necessity be referred to the country, i.e., a jury. See ss. 68 to 72 of the Ind. Evi. Act I of 1872.

Chartis reddendis. An ancient writ against him, who, having had charters of feoffment delivered to him to be kept, refused to deliver them.

Chasea est ad communem legem. A chase is by common law.

Chocvadium. A sum of money paid by villains to their lords in acknowledgment of their villenage.

Chimin appendant. That way which a man has as appurtenant to some other thing; as if he rent a close or pasture with covenant for ingress or egress through some other ground in which otherwise he might not pass.

Chiminus regius. The king's highway; that in which the king's subjects have free liberty to pass.

Chirographa. Writings under one's hand. Writings emanating from a single party, the debtor; bonds. Sing. *chirographum*, *cirographum* or *cyrographum*.

Chirographum. A bond, surety, or obligation under one's own hand. See *Syngrapha*.

Chirographum apud debitorem repertum præsuntur solutum. A bond found in the possession of the debtor is presumed to be paid.

Chose. A thing. It is used in diverse senses of which the four following are the most important:—(1) *chose local*, a thing annexed to a place, as a mill, &c.; (2) *chose transitory*, that which is moveable and may be taken away or carried from place to place; (3) *chose in action*, otherwise called *chose in suspense*, a thing of which a man has not the possession or actual enjoyment, but has a right to demand by action or other proceeding, as a debt, bond, &c.; (4) *chose in possession*, where a person has not only the right to enjoy but also the actual enjoyment of the thing.

Circa ardua regni. About the important affairs of the kingdom.

Circuitus actionis. Circuity of action. A longer course of proceeding to recover a thing sued for than is needful.

Circuitus est evitandus; et boni judicis est lites dirimere, ne lis ex lite oriatur. Circuity is to be avoided; and it is the duty of a good judge to determine litigations, lest one lawsuit arise out of another. On this maxim depends the law of set off.

Circumspecte agatis. That you act cautiously. Applied to prohibitions.

Circumstantibus. By-standers. See *Tales de...*

Citatio. A citation; a summons to appear.

Citatio ad reassumendam causam. A citation which issued when a party died pending a suit, against his heir, to revive the cause. See ss. 365 and 368 of the Code of Civ. Pro. XIV of 1882.

Citatio est de jure naturali. A citation or summons is by natural right.

Citationes non concedantur priusquam exprimitur supra quâ re fieri debet citatio. Summonses should not be granted, before that it is explained for what cause a summons ought to issue.

Civilia verba. Words of legal binding force.

Civilis obligatio. See *Naturalis...*

Civiliter. Civilly; by civil process; as opposed to criminally.

Civiliter mortuus. Civilly dead. Dead in law.

Civitas et urbs in hoc differunt, quod incolæ dicuntur civitas, urbs vero complectitur ædificia. A city and a town differ in this, that the inhabitants are called the city, but town includes the buildings.

Clam delinquentes magis puniuntur quam palam. Those sinning secretly are punished more severely than those sinning openly.

Clamea admittenda in itinere per attornatum. An ancient writ by which the king commanded the justices in eyre to admit the claim by attorney of a person who was in royal service, and could not appear in person.

Clam et secrete. Clandestinely and secretly.

Clamor de haro. An outcry after felons and malefactors. Hue and cry. The expression was used by the Normans.

Clam vi aut precario. By stealth, force, or importunity.

Clandestino copulati fuerent. They were united clandestinely.

Clarigatio. See *Arresto facto...*

Classarius. A sailor; seaman; soldier serving at sea.

Clausula derogatoria. A derogatory clause. See *Leges posteriores...*

Clausula inconsuetæ semper inducunt suspicionem. Unusual clauses always excite suspicion. See *Dolus versatur...*

Clausula generalis de residuo non ea complectitur quæ non ejusdem sint generis cum iis quæ specialim dicta fuerunt. A general clause of reservation does not comprehend those things which may not be of the same kind with those which have been specially expressed.

Clausula generalis non refertur ad expressa. A general clause does not refer to things expressed.

Clausula quæ abrogationem excludit ab initio non valet. A clause which excludes abrogation is inoperative from the beginning. A clause in a statute that it shall not be repealed, is of no force.

Clausula vel dispositio inutilis per prarumptionem remotam vel causam remotam ex post facto non fulcitur. An unnecessary or invalid clause or disposition is not rendered valid by a remote presumption, or a remote cause arising after the event. See *Quod ab initio...*

Clausum fregit. He broke through the enclosure, that is, committed an unwarrantable entry upon another's soil. These words are generally used in reference to an action of trespass in entering another's land. See *Quare clausum...*

Clava. A club; cudgel; stick.

Clavis regni. The key of the kingdom. Applied to the GREAT SEAL.

Clerici de cursu. Clerks belonging to the chancery, who made out original writs and were called *clerks of course*.

Clerici filius. The son of a clergyman. Abbrve. *cler. fil.*

Clerici non ponantur in officiis. Clergymen should not be placed in offices, *i. e.*, in secular offices.

Clerici vel monachi, ne secularibus negotiis se immisceant. Clergymen or monks should not mix themselves in secular matters.

Clerico admittendo. See *Clericum...* *Admittendo...*

Clerico capto per statutum mercatorum, &c. A writ for the delivery of a clerk out of prison, who is imprisoned upon the breach of a statute-merchant.

Clerico convicto commissio gaole in defectu ordinarii deliberando. An ancient writ that lay for the delivery to his ordinary, of a clerk convicted of felony, where the ordinary did not challenge him, according to the privilege of clerks.

Clerico infra sacros ordines constituto, non eligendo in officium. A writ directed to those who have thrust a bailiwick or other office upon one in holy orders, charging them to release him.

Clericum admittendum. A writ of execution directed not to the sheriff, but to the bishop or archbishop, and requiring him to admit and institute the clerk of the plaintiff.

Clericus. A clergyman; clerk.

Clericus argenti regis. Clerk of the king's silver. An officer belonging to the court of the Common Pleas to whom every fine was brought after it had passed the office of the *custos brevium*.

Clericus corona. Clerk of the Crown. An officer in the King's Bench, whose function is to frame, read, and record all indictments against offenders there arraigned or indicted of any public crime.

Clericus errorum. The clerk of the errors. An officer of court who transcribes and certifies records of causes.

Clericus juratorum. Clerk of the Juries. An officer who makes out the writs of *habeas corpora* and *distringas*, for the appearance of juries after the jury or pannel is returned upon the *venire facias*.

Clericus merenti hospitii regis. Clerk of the Markot. An officer of the king's house, to whom it belongs to take charge of the king's measures, and keep the standards of them which are examples of all measures throughout the land; as of ells, yards, quarts, gallons, &c., and of weights, bushels, &c.

Clericus nihilorum. Clerk of the Nihilis. An officer of the Court of Exchequer who makes a roll of all such sums as are *nihilid* by the sheriffs, to have execution done upon it for the king. *Nihilis* are issues by way of fine or amercement.

Clericus non connumeratur in duabus ecclesiis. A clergyman should not be appointed to two churches.

Clericus pacis. Clerk of the Peace. An officer belonging to the sessions of the peace, whose duty is to read indictments, enrol the proceedings and draw the process.

Clericus pellis. Clerk of the Pells. A clerk belonging to the Exchequer, whose office was to enter every tellor's (*i. e.*, an officer appointed to receive monies due to the king and to pay monies payable by the king) bill into a parchment roll, called *pellis receptorum*, and also to make another roll of payments which was termed *pellis exituum*, wherein he put down by what warrant the money was paid.

Clericus pipe. Clerk of the Pipe. An officer in the Exchequer, who having the accounts of the debts due to the king delivered and drawn out of the Remembrancer's office, charges them down in the great roll, and called the *clerk of the pipe* from the shape of that roll, which was put together like a pipe. In the reign of Hen. VI this officer was called *Ingrossator magni rotuli*, the writer of the great roll.

Clericus placitorum. Clerk of the Pleas. An officer in the Court of Exchequer in whose office all the officers of the court upon special privilege belonging to them, were to sue or be sued in any action.

Clericus privati sigilli. Clerk of the Privy Seal, who attended the Lord Privy Seal or the principal Secretary of State.

Clericus rotulorum parliamenti. Clerk of the Parliament Rolls. An officer who records all things done in the high court of parliament.

Clericus signeti. Clerk of Signet. An officer continually attendant on His Majesty's principal secretary who had the custody of the *privi signet*.

Clericus thesaurarii. Clerk of the Treasury. An officer of the Common Pleas who had the charge of keeping the records of the court; he had also the fees due for all researches.

Clericus utlagariorum. Clerk of the Outlawries. An officer for making out writs of *capias utlagatum*, after outlawry.

Clericus warrantorum. Clerk of the Warrants. An officer of the Common Pleas who entered all warrants of attorney for plaintiffs and defendants in suits.

Codicillus. A codicil; a little book.

Co-emptio. The sale of a wife to a husband.

Cogitationis pœnam nemo meretur (or *patitur*). No man deserves (or should suffer) punishment for a thought.

The mere intention to commit an offence is not punishable unless there is an attempt at least to commit it. The Indian Penal Code provides that whoever attempts to commit an offence or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, is liable to punishment (s. 511). Prior to the completion of a crime three stages may be passed through: (1) an intention to commit the crime may be conceived; (2) preparation may be made for its commission; (3) an attempt may be made to commit it. Of these three stages the mere forming of an intention is not punishable under the Penal Code. Nor is the preparation for an offence indictable. Between the preparation for the attempt and the attempt itself, there is wide difference; the preparation consists in devising or arranging the means or measures necessary for the commission of the offence; the attempt is the direct movement towards the commission after the preparations are made (*Mayne's Com. on the Ind. P. C.*, s. 511).

Cases of treason will be an exception to this maxim. See *Voluntas reputatur*...

Cognati. Maternal kindred; kindred by the mother's side.

Cognatione. A writ of cosinage, *i. e.*, kindred. A writ that lay for the heir where the *tresail* *i. e.*, the father, of the *besail* or great-grand father, was seized of lands in fee at his death, and a stranger entered upon the land and abated.

Cognitionibus mittendis. A writ directed to a judicial officer who having taken an acknowledgment or cognizance of a fine deferred to certify the same into the Court of Common Pleas. The writ directed him to certify it.

Cognitionis causa. See *Decreet*...

Cognitor. A person appointed by a plaintiff or defendant to represent him in a suit and act for him; an agent; an attorney.

Cognomen majorem est ex sanguine tractum, hoc intrinsecum est; agnomen extrinsecum ab eventu. The cognomen (*i. e.*, family name or surname) is derived from the blood of ancestors, and is intrinsic; and agnomen arises from an event, and is extrinsic.

Cognoscit. He acknowledges; he confesses.

Cognovit actionem. He has acknowledged the action. An instrument in writing whereby a defendant in an action acknowledges a plaintiff's demand to be just; and after issue suffers judgment to be entered against him without trial.

Cognovit actionem relicta verificatione. He has confessed the action, having abandoned his plea.

Cohæredes una persona censentur, propter

unitatem juris quod habent. Cohæirs are deemed as one person, on account of the unity of right which they possess.

Collatio beneficii. The bestowing of a benefice by the bishop, or other ordinary, when he hath right of patronage.

Collatio bonorum. A contribution of goods, where a portion of money advanced by a father to a son or daughter in his life time is brought into *hotchpot*, in order to have an equal distribution of his personal estate at his death.

Collatione facta uni post-mortem alterius. An ancient writ directed to the justices of the Common Pleas, commanding them to direct their writ to the bishop for the admitting of a clerk in the place of another presented by the king, who died during the suit between the king and the bishop's clerk; for, judgment once passed for the king's clerk, and he dying before he be admitted, the king may give his presentation to another.

Collatione heremitagii. A writ by which the king conferred the keeping or an hermitage upon a clerk.

Collegia. Corporations; societies; colleges. Sing. *Collegium*.

Collegium est societas plurimum corporum simul habitantium. A college is a society of several persons dwelling together.

Collegium si nullo speciali privilegio subnixum sit hereditatem capere non posse, dubium non est. If a corporation be supported by no special grant, there is no doubt that it cannot purchase an inheritance.

Colligendum bona defuncti, Letters ad. Letters to collect the goods of the deceased. Letters granted to such discreet persons as the court of Probate shall think fit, authorising him to keep the goods of a deceased person in his safe custody, and to do other acts for the benefit of such as are entitled to the property of the deceased. These letters differ from letters of administration in so far as they do not make the grantee the legal representative of the deceased. See *Prob. and Admin. Act V of 1881*, s. 40.

Colonus. A husbandman or villager, who was bound to pay yearly a certain tribute, or at certain times in the year, to plough some part of the lord's land; hence *clown*.

Color officii. Colour of office, when an act is evilly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and colour.

Combustio domorum. The burning of houses arson.

Combustio pecunie. The ancient way of trying mixt and corrupt money by melting it down upon payments into the Exchequer.

Come ceo. As well for this.

Comes. An earl; chief governor of a country.

Comes stabuli. Keeper of the stable.

Cominus. Hand to hand; in personal contact.

Comitas inter communitatus. International comity.

Comitatu commissio. A writ or commission whereby a sheriff is authorized to enter upon the charges of a county.

Comitatu at castro commissio. A writ by which the charge of a county, together with the keeping of a castle is committed to the sheriff.

Comitatus. A county; a train of followers.

Commenda, or Ecclesia commendata. A commendam; a living commended by the Crown to the care of a clerk, to hold till a proper pastor is provided for it.

Commenda est facultas recipiendi et retinendi beneficium contra jus positivum à supremi potestate. A commendam is the power of receiving and retaining a benefice contrary to positive law, by supreme authority.

Commendam recipere. To take or possess a commendam. The taking by a bishop of a benefice in his own gift, or the gift of some other person consenting to the same, to be held together with his bishopric.

Commendam retinere. To retain a commendam. A commendam usually granted to bishops in the poorer sees to aid the deficiency in their episcopal revenue, being either temporary or perpetual.

Commendatarius. He that holdeth a church living or preferment in commendam.

Commendatio. A practice whereby landless men placed themselves under the protection of a lord, and became his vassals; the lord thereby becoming answerable to justice for them. Such a vassal was called *commendatus*.

Commendatum. A deposit.

Commendatus. One who lives under the protection of a great man. See *commendatio*. *Commendatio homines* were persons who by voluntary homage put themselves under the protection of a superior lord.

Commercium. Commerce.

Commercium jure gentium commune esse debet, et non in monopolium et privatum paucorum quæstum convertendum. Commerce by the law of nations ought to be common, and not converted to monopoly and the private gain of a few.

Every agreement by which any one is restrained from exercising a lawful profession, trade, or business of any kind, is to that extent void. But he who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business. Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business

similar to that of the partnership within such local limits as are referred to above. Partners may agree that some one or all of them will not carry on any business other than that of the partnership during the continuance of the partnership (*Ind. Con. Act IX of 1872, s. 27*).

Monopolies are not recognized in India except in two cases; firstly, the exclusive right of an invention or improvement to which the original inventor of a new manufacture is entitled under Act V of 1838; and, secondly, the monopoly of certain trades carried on for the support and benefit of the State, such as the manufacture and sale of salt and opium.

Commissoria lex. The term is applied to a clause often inserted in conditions of sale, by which a vendor reserved to himself the privilege of rescinding the sale, if the purchaser did not pay his purchase money at the time agreed on.

Committitur. Let him be committed; an order of commitment.

Commодatarius. A borrower.

Commodatum. A gratuitous loan for use. The person who lends the thing is called *commodans*; the person who receives the thing is called *commодatarius*; and the contract is called *commodatum*. It differs from *locatio* and *conductio* in this, that the use of the thing is gratuitous. In *commodatum* the property in the thing lent remains in the lender, whereas in *mutuum*, which is for consumption, the property passes into the borrower.

Commodum ex injuriâ sua nemo habere debet. No person ought to have advantage from his own wrong. See *Nullus commodum...*

Common pur cause de vicinage. Common by reason of vicinage.

Commorior. To die at the same time, *c. g.*, by shipwreck. By English law there is no presumption as to survivorship in such a case.

Commune bonum. A common good; a matter of mutual or general advantage.

Commune concilium. A general council.

Commune concilium Regni Angliæ. The common council of the king of England and the people assembled in parliament.

Communem legem. See *Ad communem...*

Commune vinculum. The common chain or stock.

Communia pastura; jus pascendi. Common of pasture; right of grazing.

Communia placita. Court of Common Pleas. Abbrev. *C. P.*

Communia placita non sequantur curiam regis, sed teneantur in aliquo certo loco. Common pleas should not follow the king's court, but be held in some certain place.

Communia placita non tenenda in exchequo. Common pleas not to be heard in the Exchequer. An ancient writ directed to the treasurer and barons of the Exchequer

forbidding them to hold pleas between common persons (*i. e.*, not debtors to the king, who alone originally sued and were sued there) in that court, where neither of the parties belonged to the same.

Communi banco. Common Bench. The Court of Common Pleas was anciently so called. Abbrev. *C. B.*

Communibus annis. Taking one year with another.

Communi custodia. A writ that lay for that lord whose tenant, holding by knight-service, died, and left his eldest son under age, against a stranger who took possession of the land and of the person of the heir. Now obsolete.

Communi dividendo. (*Rm. L.*) An action brought for partition of a thing held in joint property.

Communis barrator. A common barrator; a common mover and maintainer of suits in disturbance of the peace; a common oppressor and disturber of the peace.

Communis error facit jus. A common mistake makes a right or becomes law. Common error sometimes passes current as law. Where persons are agreed in a mistaken view of the legal effect, *e. g.*, of a phrase, they are bound by the meaning they originally intended to give it. A mistake of law that has been undeviatingly pursued by the courts or by the conveyancers and others, becomes in fact good law, and the mistake is purged by the uniformly consistent practice. See *Consensus tollit...*

The law so favours the public good, that it will in some cases permit a common error to pass for right. But care must be taken in applying this maxim so as not to set up a misconception of the law in destruction of the law. Where a decision of the courts, originally wrong, or an erroneous conception of the law, especially of real property, has been made, for a length of time, the basis upon which rights have been regulated and arrangements as to property made, the maxim *communis error facit jus* may be applied (*Davidson v. Sinclair*, 3 App. Cas. 788). Where courts of justice have declined to correct misconceptions of long standing, the reluctance has been due to a wholesome fear of interference with rights based upon them; and it is pointed out by Lord Hetherley, that the House of Lords has frequently acted upon the mistaken practice of conveyancers, and will regard the necessity for following previous decisions as more imperative where the common dealings of mankind are in question (*Bain v. Fothergill* L. R. 7 H. L. 158, 209). For *omnis innovatio plus novitate perturbat quam utilitate prodest*.

Even if the construction of an Act is erroneous, it may be so declared by parliament as to make its adoption obligatory. Though a mistaken opinion of the Legislature concerning the law does not make the law, yet it may be so declared as to operate in

future (*Abdulla v. Mohan Gir*, 11 All. 490, F. B.).

On a question of Hindu Law, it has been observed by the Privy Council that if a commentator (Sir William Jones) is mistaken in attributing certain words of a text to a particular text-writer, but if the version was probably founded on the tradition of the time at which he wrote, and has been accepted by the Indian Courts without question, there is no reason to deviate from it, for, *communis error facit jus* is a sound maxim (*Jagdish Bahadur v. Sheo Partab Singh*, 3 Bom. L. R. 301).

Communis opinio. A common opinion.

Communis piscaria. A common of piscary or fishing.

Communis rixatrix. A common female brawler; a scold.

Comparuit ad diem. He appeared at the day.

Compellativus. An adversary or accuser.

Compendia sunt dispendia. Abbreviations are detriments. *Cf.* The longest way round is the shortest way home.

Compensatio. Recompense; a set off.

Compensatio criminum. Compensation of offences. Where a husband and wife were both guilty of adultery, there was, according to the doctrine of the canon law a *compensatio criminum*, *i. e.*, the guilt of the one was neutralised by that of the other, and both were restored to the position of innocent persons.

Compensatio delicti. The compensation for a wrong.

Compertorium. A judicial inquest in the Civil Law, made by delegates or commissioners to find out and relate the truth of a cause.

Complexus bonorum defuncti. The entire property left by a deceased person.

Compos mentis. Sound of mind; of sound mind.

Compromissori sunt iudices. Arbitrators are judges.

Compromissum. A submission to arbitration: compromise.

Computatio. A reckoning; computation.

Computo. A writ to compel a bailiff, receiver, or accountant, to yield up his accounts.

Conatus quid sit, non definitur in jure. What an attempt is, is not defined in law.

Concessi. I have granted. A word of frequent use in conveyances, creating a covenant in law, as *dedi* (I have given) makes a warranty.

Concessimus. We have granted.

Concessiones. Grants.

Concessio per regem fieri debet de certitudine. A grant by the king ought to be made from certainty. See *Verba chartarum*....

Concessio versus concedentem latam interpretationem habere debeat. A grant ought to have a liberal interpretation against the grantor. See *Verba chartarum*....

Concessit et dimisit. He has granted and demised.

Concessit solvere. He granted and agreed to pay. An action of debt upon a simple contract.

Concessor. A grantor.

Concilium. A council; an assembly of councillors met to consult; a court; a time and place of meeting.

Concionatores. Common council men; free-men.

Conclusio. Conclusion; a binding act. Also the end of a pleading or conveyance.

Concordiâ parva res crescunt, et opulentiâ lites. By concord small means increase; and by wealth, litigations.

Concubina. An unchaste woman.

Concubitu prohibere vago. To forbid illicit connection.

Condictio. This was, in Roman Law, the general name of a personal action, just as *indicatio* was the general name of a real action. It lay to recover a sum certain or thing certain; when authorized by any statute (e.g., to recover any statutory penalty), it was called a *condictio ex lege*.

Condictio furtiva. The action of *condictio* applied for the recovery of stolen property.

Conditio. A condition; stipulation; terms; agreement; compact.

Conditio beneficiâlis, quæ statum construit benignè secundum verborum intentionem, est interpretandi; odiosa, autem, quæ statum destruit, strictè, secundum verborum proprietatem, accipiendâ. A beneficial condition, which creates an estate, ought to be construed favourably, according to the intention of the words; but an odious condition which destroys an estate, ought to be construed strictly, according to the letter of the words.

Conditio casuelle. A condition which depends on a chance or hazard.

Conditio dicitur, cum quid in casum incertum quæ potest tendere ad esse aut non esse. It is called a condition, when something is given on an uncertain event, which may or may not come into existence. See ss. 31 to 36 of the Ind. Con. Act IX of 1872.

Conditio illicita hebetur pro non adjectâ. An unlawful condition is deemed as one not annexed. See *Ex dolo malo*...

Conditio mixte. A condition which depends partly on the will of the party and partly on the will of others.

Conditiones quælibet odiosæ; maxime autem contra matrimonium et commercium. Some conditions are odious; chiefly those against marriage and commerce. See *Ex dolo malo*...

Conditio præcedens adimpleri debet priusquam sequatur effectus. A condition precedent must be fulfilled before the effect can follow.

Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property the condition shall be deemed to have been fulfilled if it has been substantially complied with (*Trans. of Pro. Act IV of 1882, s. 26; Ind. Suc. Act X of 1865, s. 115*).

But such an interest fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy (*Trans. of Pro. Act IV of 1882, s. 25; Ind. Suc. Act X of 1865, ss. 113-4*). A contingent contract to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contract becomes void (*Ind. Con. Act IX of 1872, s. 32*). Contingent contracts to do or not to do anything, if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible and not before (*Ibid., s. 33*).

Conditio resolutoire. A condition which undoes an obligation which has already had effect as such; a condition on the happening of which the obligation is to become void.

Conductio. A hire; hiring.

Confurreatio. The most solemn form of marriage among the Romans.

Confederatio. A confederacy; i.e., when two or more persons combine together to do any damage or injury to another, or to do any unlawful act.

Confessio, facta in judicio, omni probatione major est. A confession made in a judicial proceeding is greater than all proof.

Confession means an acknowledgment of guilt. A Confession by an accused person, caused by inducement, threat or promise, having reference to the charge against the accused person, and proceeding from a person in authority, is generally irrelevant in criminal proceedings (*Ind. Evi. Act I of 1872, s. 24*). No confession made to a police officer shall be proved against the accused. No confession made by the accused while in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against him (*Ibid., ss. 25-6*). See also ss. 27 to 30 of the same Act. See *Habemus optimum*...

Confessus in judicio pro judicato habetur, et quodammodo sua sententiâ damnatur. A person confessing his guilt when arraigned is deemed to have been found guilty, and is, as it were, condemned by his own sentence.

Confirmare est id firmum facere quod prius infirmum fuit. To confirm is to make firm that which was before infirm.

Confirmare nemo potest priusquam jus ei acciderit. No person can confirm before the right shall fall to him.

Confirmatio aut est perficiens, crescens aut diminuens. A confirmation is either by perfecting, increasing or diminishing. *Perficiens*, as if a feeoffee upon condition makes feoffment, and the feoffer confirms the

estate of the second feoffee. *Crescens*, that doth always enlarge the estate of a tenant; as tenant for years to hold for life, &c. *Diminuens*, as when the lord of whom the land is holden confirms the estate of his tenant, to hold by a less rent.

Confirmatio Chartarum. Confirmation of the charter. A statute enacted in the twenty-fifth year of the reign of king Edward I, in confirmation of Magna Charta.

Confirmatio est nulla ubi donum præcedens est invalidum. There is no confirmation where the preceding gift is invalid. See *Quod ab initio...*

Confirmatio omnes supplet defectus, licet id quod actum est ab initio non valuit. Confirmation supplies all defects, though that which has been done was not valid at the beginning. See *Quod fieri non...*

Confirmat usum qui tollit abusum. He confirms a use who removes an abuse.

Confitens æus. An accused person who admits his guilt.

Conflictus legum. A conflict of laws.

Confusio. In French and Roman Law, this means the extinction of a debt by the merger of the persons of debtor and creditor in one and the same person.

Congè d'Accorder. Leave to accord or agree.

Congè d'Eslire or d'Elire. Leave to choose. The King's license or permission sent to a dean and chapter to proceed to the election of a bishop when a see becomes vacant.

Congressus. A carnal union; copulation. The extreme practical test of the truth of a charge of impotence brought against a husband by a wife.

Conjunctim aut separatim. Jointly or separately.

Conjunctim et divisim. Jointly and severally.

Conjunctio animorum. Union of the mind; consent.

Conjunctio corporum. Union of the body; consummation of marriage.

Conjunctum perquisitum. A joint purchase.

Conjuratio. An oath. A compact made by several persons combining by oath to do any public harm. Personal conference with the devil or some evil spirit to know any secret or effect any purpose; conjuration.

Conquestus. Conquisitio. An acquirement.

Consanguineo. Kindred; cousinship; a writ of cosinage. See *Mort d'ancestor*. Consanguinity is defined to be *vinculum personarum ab eodem stipite descendendum*, the connection or relation of persons descended from the same stock or common ancestor.

Consanguineus est quasi eodem sanguine natus. A person related by consanguinity is, as it were, sprung from the same blood.

Consanguineus frater. A brother by the father's side; in contradistinction to *frater uterinus*, the son of the same mother.

Conscientia dicitur a con et scio, quasi scire cum Deo. Conscience is called from *con* and *scio* to know, as it were, with God.

Consecratio est periodus electionis; electio est præambula consecrationis. Consecration is the termination of election; election is the preamble of consecration.

Consensus ad idem. Consent tallying in the essential point.

Consensus est voluntas plurium ad quos res pertinet simul juncta. Consent is the conjoint will of many persons, to whom the thing belongs.

Consensus facit legem. Consent makes the law. When the parties make an agreement the terms are of their mutual willing, and are no longer a matter of legal consideration if not against the law. See *Modus et conventio...*

Consensus facit matrimonium. Consent constitutes marriage.

Consensus non concubitus, facit matrimonium. Consent, not concubinage makes a marriage good. See *Nuptias non...*

By the law of England, marriage is considered in the light of a contract; and the leading principle is that marriage can only be constituted by the consent of the parties expressed under such circumstances as the law requires, *i. e.*, in the presence and with the intervention of a minister in holy orders; *concubitus* (consummation) may take place for the mere gratification of present appetite, but marriage requires the consent of the parties only (*Reg. v. Mills*, 10 Cl. & Fin. 534). But the legislature has, by various enactments, recognized marriage as essentially a civil contract without any religious ceremony, provided that the provisions of those enactments are complied with. Under the marriage Acts the consent of a parent or guardian is usually required for the marriage of an infant who is not a widower or widow; but though a person whose consent is so required can take steps to prevent the marriage, yet if the marriage takes place, the absence of the consent does not invalidate it, for *quod fieri non debet factum valet* (*Venkatacharyulu v. Rangacharyulu*, 14 Mad. 316; *Khushalchand Lalchand v. Bai Mani*, 11 Bom. 247; *Gazi v. Sukru*, 19 All. 515; *Bai Diwali v. Moti Karson*, 22 Bom. 509; *Mulchand v. Bhudhia*, 22 Bom. 812).

This maxim prevents the marriage of a person *non compos mentis*, for consent is absolutely necessary to matrimony, and such person is incapable of consenting thereto. And, similarly, a marriage obtained by the duress of one of the parties, so that there is no real consent of that party, is void.

Under the Hindu Law marriage is regarded as a religious ceremony and not as a contract, and the marriage of a person *non compos mentis* or of an infant is not void for want of consent.

Under the Mehomedan Law, marriage cannot be contracted by an infant without discretion or by a lunatic, for the conditions of a valid marriage are discretion, puberty and freedom of the contracting parties. In the absence of the first condition the contract is void *ab initio*; in the absence of the two latter conditions, the contract is voidable, for the validity of marriages contracted by discreet minors, or slaves, is suspensive of the consent of their guardians or masters.

If a girl is given in marriage when a mere child by her mother, she has the option either of ratifying or repudiating such marriage on attaining puberty. Under the *shia* law, such a marriage is of no effect until it has been ratified by the minor, and under the *sunni* law, it is effective till cancelled by the minor. Under both schools of law, the minor has the absolute power, on attaining puberty, to ratify or cancel an unauthorized marriage, though under the *sunni* law ratification is presumed if the girl remains silent after attaining puberty, and allows the marriage to be consummated. A judicial order is not necessary to effect the cancellation of the marriage (*Badal Aurat v. Queen-Empress*, 19 Cal. 79).

Consensus, non concubitus, facit nuptias vel matrimonium, et consentire non possunt ante annos nobiles. Consent, and not cohabitation constitutes nuptials or marriage, and a person cannot consent before marriageable years. See *Ami nobiles*.

Consensus tollit errorem. The acquiescence of a party in an error obviates its effect. See *Communis error*...

The acquiescence of a party who might take advantage of an error, obviates its effect. Local actions must, before the Judicature Act, have been brought in the country in which the cause of action arose, and transitory actions in any country at the plaintiff's option; and no venue could be changed without the special order of the court, unless by consent of the parties. Under this maxim, also, if the venue in an action is laid in the wrong place, and this is done *per assensum patrum*, it shall stand. Consent, however, cannot give jurisdiction, for mere nullity cannot be waived. Jurisdiction is not conferred by waiver. The fact that objection is not taken to the jurisdiction of the judge does not confer jurisdiction upon him, if he has no inherent jurisdiction (*Kumarasami v. Subbaraya*, 23 Mad. 814).

The important doctrine of waiver is also founded on this maxim. Waiver is the passing by of an occasion to enforce a legal right, whereby the right to enforce the same is lost; a common instance of this is where a landlord waives a forfeiture of a lease by receiving rent, or distraining for rent, which has accrued due after the breach of the covenant causing the forfeiture became known to him (*Devonport v. The Queen*, 3 App. Cas. 115).

When applied to legal proceedings, waiver may be defined to be the doing something after an irregularity committed and with a knowledge of such irregularity, where the irregularity might have been corrected before the act was done. But it is essential to distinguish between a proceeding which is merely irregular and one which is completely defective and void. In the latter case, the proceeding is a nullity which, as observed above, cannot be waived by any *laches* or subsequent proceedings of the opposite party. See *Quod ab initio*...

Under the Indian Penal Code certain acts, which would otherwise be considered as offences, are not offences if done by consent (ss. 87-9). But, consent does not excuse an act which is an offence independently of any harm which it may cause, or be intended to cause, or be known to be likely to cause to the person giving consent (*Ibid.*, s. 91).

Under urgent circumstances, an act done in good faith for the benefit of the person, is excused, even though done without the consent of that person (*Ibid.*, s. 92). Consent is not a proper consent if it is known to be given under fear or misconception, or by a child or person of unsound mind (*Ibid.*, s. 90).

Consentientes et agentes pari poenâ placentur. Those consenting and those perpetrating are embraced in the same punishment. Principals and accessories are subject to like punishment. See s. 109 of the Ind. P. C. XLV of 1860.

Consentire matrimonio non possunt infra annos nobiles. Those who are below marriageable years cannot give their consent to matrimony. See *Consensus non*...

Consequentia non est consequentia. The Consequence of a consequence does not exist.

Conservatore vel custos pacis. A preserver or custodian of the peace. He that hath an especial charge to see the king's peace kept.

Conservator naviarum et salutarum regis conductum. Conservator of the truce and safe-conducts. An officer appointed by the king's letters patent, whose charge was to inquire of all offences done against the king's truce and the safe conducts upon the main sea, as the admirals customably were wont to do.

Consideratio curia. The judgment of the court.

Consideratum est per curiam. It is considered by the court. The formal and ordinary commencement of a judgment.

Consignatio. The deposit of a thing owed with a third person, under the authority of the court.

Consilia multorum quaruntur in magnis. The counsels of many are required in great things.

Consiliarius. A counsellor; a barrister.

Consilii non fraudulentia nulla obligatio est ceterum, si dolus et calliditas intercessit de dolo actio competit. No one is responsible for honest advice; but where fraud and cunning have intervened, there is ground for an action *de dolo*, or for fraud.

Consilium. Counsel; advice given; the time allowed for one accused to make his defence.

Consilium Regis. The king's counsel. The name under which the House of Lords, assisted by the Judges, administered justice in the early periods of English law.

Consimili casu. See *Casu consimili*.

Consolato del mare. A code of sea-laws compiled by order of the ancient kings of Arragon.

Consolidatio. In Roman law, this is the merger which arises by release in English Law.

Consortio malorum me quoque malum facit. The company of wicked men makes me also wicked.

Conspectu litis. With the view of a litigation. See *Ante litem*....

Conspiratio. A writ that lay against conspirators.

Constabularius. A constable.

Constat. It appears. A certificate of that which appears on the record. See *Inspectimus*.

Constat de personâ (or corpore). The person is ascertained. See *Præsentia corporis*...

Constituimus. We constitute or appoint.

Constitutio. A constitution; regulation; order.

Constitutiones tempore posteriores potiores sunt his quæ ipsas præcesserunt. Latter laws prevail over those which precede them. See *Leges posteriores*....

Constitutor. A person who has promised to pay the debt of another.

Constringas. See *Distringas*.

Constructio legis non facit injuriam. The construction of law works no wrong. See *Benignæ faciendæ*...

Consuetudines. Customs; usages.

Consuetudinibus et serviciis (or servitiis). A writ which lay against a tenant who deforced or deprived his lord of the rent or service due to him. A writ to recover arrears of rent.

Consuetudo, contra rationem introducto, potius usurpatio quam consuetudo appellari debet. A custom introduced against reason ought to be called rather an usurpation than a custom. See *Optimus interpretes*...

Consuetudo debet esse certa; nam incerta pro nulla habetur. A custom ought to be certain; for an uncertain custom is considered null. See *Optimus interpretes*...

Consuetudo est altera lex. Custom is another law.

Consuetudo est optimus interpretes legum. Custom is the best expounder of the laws.

Consuetudo et communis assuetudo vincit legem non scriptam, si sit specialis; et interpretatur legem scriptam, si lex sit generalis. Custom and common usage overcome the unwritten law, if it be special; and interpret the written law, if it be general.

Consuetudo ex certâ causâ rationabili usitata privat communem legem. A custom grounded on a certain reasonable cause, supersedes the common law; i. e., such customs as gavelkind, which prevail over the law of descent, though differing from it. See *Optimus interpretes*...

Consuetudo licet sit magnæ auctoritatis, nunquam tamen præjudicat manifestæ veritati. A custom, though it be of great authority, should never, however, be prejudicial to manifest truth. See *Optimus interpretes*...

Consuetudo loci est observanda. The custom of the place is to be observed.

Consuetudo manerii et loci observanda est. The custom of a manor and place is to be observed.

Consuetudo neque injuriâ oriri neque tolli potest. Custom can neither arise from, nor be taken away by, injury.

Consuetudo non trahitur in consequentiam. Custom is not to be drawn into consequence.

Consuetudo præscriptiva et legitima vincit legem. A prescriptive and legitimate custom overcomes the law. See *Optimus interpretes*...

Consuetudo pro lege servatur. Custom is to be held as law.

Consuetudo regni Angliæ est lex Angliæ. The custom of the kingdom of England is the law of England.

Consuetudo semel reprobata non potest amplius induci. Custom once disallowed cannot be again produced.

Consuetudo volentes ducit, lex nolentes trahit. Custom leads the willing; law compels the unwilling.

Consulta ecclesiâ. A church full, or provided for.

Consultatio. Consultation. A writ whereby a cause having been removed by prohibition from the ecclesiastical court to the king's court, is returned thither again.

Contemporanea consuetudo optimus interpretes est. Contemporary custom is the best interpreter.

Contemporanea expositio est optima et fortissima in lege. A contemporaneous exposition is the best and most powerful in law.

The best and surest mode of expounding an instrument is by referring to the time when, and the circumstances under which, it was made. There is no better way of interpreting ancient words, or of construing ancient grants, deeds, and charters, than by usage. Generally, however, usage does not aid interpretation unless there be ambiguity (*North Eastern R. Co. v. Harrison*, L. R. 1900, A. C. 260).

In construing statutes, great authority is attributed to the construction put upon it by judges who lived at or soon after the time when the statute was made, as being best able to determine the intention of the legislature from their knowing the circumstances to which the statute related. Courts, however, have frequently repudiated the idea of being influenced in their interpretation of a statute by knowledge of what occurred in Parliament during the passing of the Bill (*Per Pollock, C. B., 7 Exch. 617; per Alderson, B., 5 Exch. 667*).

As to the right of referring to the statement of Objects and Reasons annexed to a Bill or to the Report of the Select Committee, the Calcutta High Court had held in *Romesh Chunder v. Hiru Mondal* (17 Cal. 852) that for the purpose of construing a section of an Act and ascertaining the intention of the Legislature, the Report of the Indian Law Commissioners or a Select Committee appointed to consider a Bill may be referred to. The right to refer to the Objects and Reasons of a Bill was also discussed in *Fadu Zhala v. Gour Mohun Zhala* (19 Cal. 544). See also *Ramchandra v. Hazi Kassim* (16 Mad. 208). In *Administrator General v. Prem Lall Mullick* (21 Cal. 732) it was held that the history of the passing of an Act, and the intention of the Legislature in introducing it, though not admissible in England to explain a statute, have been in this country taken into consideration in construing Acts of the Legislature. *Per Prinsep, J.*—The Objects and Reasons given by the Legislature on the introduction of a Bill and the Report of the Select Committee on it, may be referred to in construing any Act to show the intention of the Legislature in passing it.

But the above principle was reversed by the Privy Council in the *Administrator General of Bengal v. Prem Lall Mullick* (22 Cal. 788; L. R. 22 I. A. 107; on appeal from *Administrator General v. Prem Lall Mullick*, 21 Cal. 732) in which it was held that it is not required that in a consolidating statute each enactment, when traced to its source, must be construed according to the state of things which existed at a prior time when it first became law; the object being that the statutory law bearing on the subject should be collected and made applicable to the existing circumstances; nor can a positive enactment be annulled by indications of intention, at a prior time, gathered from previous legislation on the matter. Proceedings of the Legislature in passing a statute are excluded from consideration on the judicial construction of Indian, as well as of British Statutes.

The Bombay High Court held in *Shaikh Moosa v. Shaikh Essa* (8 Bom 241) that for the purpose of ascertaining the intention of the Legislature in passing an Act, where that intention, so far as can be gathered

from the Act itself, appears doubtful, the "Objects and Reasons" may be referred to. It is not however, permissible to refer for that purpose, to the various forms in which the Bill was brought before the Legislature. But in *Gopal Krishna v. Sakhojirao* (18 Bom 133) it was held that for the purpose of construing an Act, the debate upon the Bill when before the Legislative Council is not to be referred to. And also in the recent case of *Queen-Empress v. Bal Gangadhar Tilak* (22 Bom. 112) it was held (following *Administrator General of Bengal v. Prem Lall Mullick*, 22 Cal 788; L. R. 22, I. A. 107) that the proceedings in the Legislative Council which result in the passing of an Act cannot be referred to as aids to the construction of that Act.

Where a magistrate decided that certain offences could be lawfully compounded, having regard to an amending Bill which was before the legislature, held, that it was irregular for such Magistrate to allow his decision to be guided by any thing in a Bill that had not become law, and it was his duty to have interpreted the section of the Act in question without reference to merely contemplated legislation (*Raunak Husain v. Harbans Singh*, 3 All. 289).

Contemptio. Contemptus. Contempt of court. Disobedience to the rules, orders, or process of a court, which hath power to punish such offence. See s. 188 of the Ind. P. C. XLV of 1860.

Contestatio litis. The disputing of a suit.

Contestatio litis eget terminos contradictorios. The joinder of issue in a suit needs contradictory terms.

Continuando. In continuing; by continuation. In actions for trespasses of a permanent nature, where the injury is continually renewed, the plaintiff's declaration may allege the injury to have been committed by continuation from one given day to another, which is called laying the action with a *continuando*, and the plaintiff shall not be compelled to bring separate actions for every day's separate offence.

Contra. Against; on the contrary; otherwise.

Contra bonos mores. Against good morals.

Contractata jure, contrario jure percut. Privileges established by one law are abrogated by the provisions of an opposite law. See *Leges posteriores...*

Contractus. A covenant or agreement between two or more persons with a lawful consideration or cause.

Contractus bonae fidei. These were, in Roman Law, those contracts which admitted of equitable defences and other equitable considerations; they were opposed to contracts *stricti juris* (e. g. *stipulatio*), which admitted no such equitable defences or considerations, at least, until their original character was compelled by statute to admit them.

Contractus civiles. Those contracts which were actionable either in virtue of the old common law or by virtue of any particular statute; they were opposed to the *contractus pratorii* which were actionable only through the aid of the prætor, who (for that purpose) had to adopt the existing legal forms of actions.

Contractus est quasi actus contra actum. A contract is, as it were, act against act, *i. e.*, a promise by one party to do a thing in consideration of the other party doing something in return.

Contractus ex turpi causâ vel contra bonos mores, est nullus. A contract from a base consideration, or against good morals, is null.

Contractus pratorii. See *Contractus civiles*.

Contractus stricti juris. See *Contractus bonæ...*

Contrafactio. A counterfeiting.

Contrafactio sigilli regis. A counterfeiting the king's seal.

Contra fictionem non admittitur probatio; quid enim efficerit probatio veritatis, ubi fictio adversus veritatem fuit? Nam fictio nihil aliud est, quam legis adversus veritatem in re possibili ex justâ causâ dispositio. Proof is not admitted against fiction; for what can the evidence of truth effect which fiction supposes against truth? Because fiction is no other than a just policy of the law, in a possible matter, against truth. See *In fictio juris...*

Contra formam collationis. A writ that issued where lands given in perpetual alms to a church or religious house were wrongfully alienated by the abbot or his successor to the disherison of the house. By means of this writ the donor or his heirs could recover the lands.

Contra formam feoffamenti. Against the form of the feoffment. An old writ that lay for the heir of a tenant who, having entered into possession of lands under a charter of feoffment from his lord on condition of performing certain services, was afterwards 'distrained,' *i. e.*, had his goods seized for non-performance of services not required by the charter of feoffment.

Contra formam statuti. Against the form of the statute in such case made and provided. The usual conclusion of every indictment, &c., brought for an offence created by statute.

Contra jus gentium. Against or contrary to the law of nations.

Contra ligeantiam suam. Against or contrary to his allegiance.

Contramandatio placiti. Countermand of a plea; a respiting; or giving a defendant further time to plead or answer; or a countermand of what was formerly ordered.

Contramandatum. A countermand. This is where a thing formerly executed is afterwards made void by the party that first did it. A lawful excuse, which the defendant in a suit by attorney alleges for himself

to show that the plaintiff has no cause of complaint.

Contra negantem principia non est disputandum. Against one denying principles, a dispute is not to be maintained.

Contra non valentem agere nulla currit præscriptio. Prescription does not run against a party under disability or who is unable to act.

For instance, in the case of a debt, it only begins to run from the time when the creditor has a right to institute his suit, because no delay can be imputed to him before that time. (*Ind. Limitation Act XV of 1877, Sect. II, Arts. 66 and 69*). Where a loan is made by cheque the statute does not begin to run until the cheque is paid (*Ibid., Art. 58; Garden v. Bruce, L. R. 3 C. P. 300*). If a person incurs a debt while he enjoys the immunity from process which is allowed to an ambassador, the period does not begin to run until that immunity has ceased (*Musurus Beg v. Gadban, L. R. 1894, 2 Q. B. 352; 63 L. J. Q. B. 627*). So in the case of a minor, an insane person, or an idiot, the period of limitation does not begin to run until the disability has ceased (*Indian Limitation Act, s. 7*). So also where the defendant is out of British India the time during which he is so absent from British India is to be excluded in computing the period of limitation (*Ibid., s. 13*). But when once time has begun to run no subsequent disability or inability to sue stops it except in the case where letters of administration to the estate of a creditor have been granted to his debtor, when the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues (*Ibid., s. 9; Seagram v. Knight, L. R. 2 Ch. 628*).

The inability of the plaintiff to sue before a particular time falls within the purview of the maxim *contra non valentem agere non currit præscriptio* and a suit commenced within the prescribed period computed from that time is not barred (*Tukaram v. Sujangir, 8 Bom. 585*).

Contra pacem. Against the peace. It is generally alleged in indictments that the offence was committed against the peace of our Lord the King.

Contra pacem balivorum. Against the peace of the bailiffs of a corporation.

Contra pacem domini regis. Against the peace of our lord the king.

Contrapositio. A plea or answer.

Contrariorum contraria est ratio. The reason of contrary things is contrary. Compare *Argumentum a simile... Dissimilium...*

Contra tabulas. Contrary to the will or testament.

Contratinere. Contratenere. To withhold.

Contra veritatem lex nunquam aliquid permittit. The law never allows anything contrary to truth.

Contraxisse unusquisque in eo loco intelligitur in quo ut solverit se obligavit. Every person is understood to have contracted in that

place, where he has obliged himself to pay. See *Lex loci contractus*.

Contractatio rei alienæ, animo furandi, est furtum. The touching or removing of another's property, with an intention of stealing, is theft.

Contributio. Contribution.

Contributio facienda. A writ that lay, where more were bound to do some act, and yet one of them was put to the whole burden, to compel the rest to make contribution.

Contubernium. A dwelling together; co-habitation; the union of slaves with their master's consent, the children of such union being the property of their parents' owners.

Contumace capiendo, De. Of taking the contumacious person. A writ for the purpose of enforcing obedience to the decrees of an ecclesiastical court. It was issued for the arrest of the party in contempt.

Contumacia. An obstinate disobedience to a judicial order; an obstinate refusal to appear in court when legally summoned; contempt of court.

Conventio. An agreement or covenant.

Conventio in unum. An agreement between the two parties to a contract upon the sense of the contract proposed. If the assenting party does not assent to the proposal in the sense in which it is made, he is not bound by his assent unless his mistake is unreasonable. See the Ind. Con. Act IX of 1872, ss. 7 and 13.

Conventiones. A writ for the breach of any covenant in writing whether real or personal. A writ of covenant.

Conventio privatorum non potest publico juri derogare. An agreement of private persons cannot affect public right. See *Conventio vincit legem*.

Conventio vincit legem. An agreement overcomes law.

An agreement entered into by the parties has the force of law as between the parties or their representatives. Whenever the words "in the absence of any contract to the contrary" occur in a section of an enactment, it is to be understood that the parties are at liberty to make any suitable provision for themselves in the agreement without regard to the provisions of that section which are deemed to operate only if the parties have not made any such express provision for themselves. See for example, the Ind. Con. Act IX of 1872, ss. 43, 93, 94, 95, 219, 221, 230, 241, 253; the Ind. Stamp Act II of 1899, s. 29; the Trans. of Pro. Act IV of 1882, ss. 3, 36, 55, 65, 67, 106, 108 and 119. But this maxim has no application where the interests of the public are injured, *conventio privatorum non potest publico juri derogare*. For example, the following contracts are considered void as being opposed to public good:—Contracts which are forbidden by law; or are of such a nature that, if permitted, they would defeat the provisions of any law; or are

fraudulent; or involve or imply injury to the person or property of another; or are immoral or opposed to public policy (*Ind. Con. Act IX of 1872, s. 23*); Agreements in restraint of marriage (*Ibid.*, s. 26); Agreements in restraint of trade (*Ibid.*, s. 27); Agreements in restraint of legal proceedings (*Ibid.*, s. 28); Agreements by way of wager (*Ibid.*, s. 30).

The following are also illegal contracts as opposed to public policy:—Contracts which have a tendency to interfere with the due administration of public justice; contracts prejudicial to the revenue; marriage brokerage or brokerage contracts for procuring a marriage; contracts for the prevention of co-habitation between man and wife; contracts respecting separation between man and wife, unless it is actually existing at the time; contracts for the sale and transfer of certain public appointments [*Trans. of Pro. Act IV of 1882, s. 6, cls. (f), (g) and (h)*]; contracts whereby a person, who has no interest in a matter in litigation, agrees to aid in it, called *maintenance*; contracts whereby a person who has no interest in a matter in litigation (or only a collateral interest), agrees, in consideration of a share of the fruits thereof, to render aid in regard to such litigation, called *champerty*.

See *Modus et conventio... Ex dolo nullo...*

Convicia si irascaris tua divulgata, spreta exolescunt. If you be moved to anger by insults you publish them; if despised, they are forgotten.

Convictum. Abuse; censure; anything which publicly insults another.

Convictus. A convict. He that is found guilty of an offence by a verdict of a jury.

Convivium. The same among the laity as *procuratio* with the clergy, viz., when a tenant, by reason of his tenure is bound to provide meat and drink for his lord once or oftener in the year.

Copia libelli deliberanda. A writ that lay where a man could not get a copy of a libel at the hands of a spiritual judge, to have the same delivered to him.

Copia vera. A true copy of an official document; the phrase is often used by diplomatists.

Copula. The corporal consummation of marriage.

Copulatio verborum indicat acceptionem in eodem sensu. The coupling of words shows that they are to be understood in the same sense. See *Noscitur a sociis*.

Coram domino rege. Before our lord the king.

Coram ipso rege. Before the king himself. The Court of Kings' Bench is so called.

Coram nobis. Before us; in our presence. A phrase put into the mouth of the Sovereign in speaking of proceedings in the King's Bench. The vulgar say "He was on his *coram nobis*," that is, he was brought before persons in authority.

Coram non iudice. In the presence of a person not a proper judge. When a suit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be *coram non iudice* before an improper tribunal and the judgment is void.

Where a petitioner was examined on solemn affirmation by a judge who had no authority to examine the petitioner upon oath in such a case, *held*, that the evidence given was *coram non iudice*, and could not form the subject of a prosecution for false evidence (*Queen v. Chota Jadub Chander Biswas*, W. R. 1864, Gap. No. p. 15).

Coram paribus. Before his peers or equals.

Coram paribus de vicineto. Before his equals, resident in the neighbourhood.

Coram populo. Before the people or the public; often used to signify "in newspapers or speeches."

Coram rege. Before the king. In the king's presence.

Coram vobis. Before you.

Corium. A whip; skin.

Corium forisfacere. Corium perdere. To forfeit one's skin; applied to a person condemned to be whipped; anciently the punishment of a servant.

Corium redimere. To compound for a whipping.

Cornagium. A kind of tenure, the service of which was to blow a horn when any invasion of the Scots was perceived. This old service of horn blowing was afterwards paid in money and the sheriffs accounted for it under the title of *cornagium*.

Corodio habendo. A writ to exact a corody of an abbey or religious house.

Corona mala. The clergy who abused their character were so called.

Coronare filium. To make one's son a priest. Anciently, lords of manors did not allow their tenants who held by *villanage* to make their sons a priest, lest such lords should lose a villain by his entering into holy orders. See *Homo coronatus*.

Coronator. A coroner.

Coronatore eligendo. For electing a coroner. A writ issued to the sheriff, commanding him to proceed to the election of a coroner.

Coronatore exonerando. For relieving a coroner. A writ for the removal of a coroner by reason of old age, sickness, or his being guilty of extortion.

Corpora corporata. Bodies corporate.

Corporatio. A corporation.

Corps diplomatiques. (Fr.) The body of ambassadors and diplomatic persons.

Corpus. Body; the capital of a fund as opposed to the income.

Corpus cum causa. A writ formerly issuing out of Chancery to remove both the body and record touching the cause of any man lying in prison for debt, into the King's Bench, there to lie till he have satisfied the judgment.

Corpus delicti. The body of the offence, or essence of a crime. A phrase used with reference to the establishment of the fact that an offence has been committed, as opposed to the proof that a given person has committed it.

Corpus humanum non recepit astimationem. The human body is not susceptible of appraisement.

Corpus juris. The body of the law; the whole mass of the law.

Corpus juris canonici. The body of the canon law.

Corpus juris civiles. The body of the Roman Civil Law.

Corredium. Corrodium. Conredium. Corody.

Correi credendi. (Sc. L.) Persons jointly entitled as creditors to the payment of a debt.

Correi debendi. Persons jointly indebted.

Corruptio optima est pessima. Corruption of the best is worse.

Corruptio sanguinis. Corruption of blood. Where a person was attainted of treason or felony, his blood was said to be corrupted and neither his children nor any of his blood could be heirs to him.

Corruptissima reipublica plurima leges. When the state is most corrupt, then are the laws most multiplied. The relaxed morals of a people may be estimated in some degree from the legal restraints which it is found necessary to impose.

Costumes de la mer. Customs of the sea; maritime laws.

Costumier. Book of customs.

Covert. Protected; married.

Covert baron. See *Feme covert. Vir et uxor...*

Crassa negligentia. Gross neglect. See *Culpa lata*.

Creditor qui permittit rem venire pignus dimittit. A creditor who permits the sale of the thing pledged, loses his security.

Crementum comitatus. The increase of the county; the improvement of the king's rents, for which the sheriffs of counties anciently answered in their accounts.

Crepere oculum. To put out an eye. An offence punishable with a fine of 50s. among the Saxons, and 60s. under the laws of Henry I.

Crepusculum. Twilight.

Crescente malitia crescere debet et poena. When vice increases, punishment ought also to increase.

Cretio. The formal declaration respecting the acceptance of an inheritance; the period fixed by a testator within which the heir must have formally declared his intention to accept.

Cri de pais. Hue and cry, raised by the country in the absence of the constable, on commission of a robbery or other felony.

Crimen falsi. The crime of forgery. Also the crime of swearing falsely; or selling by false weights and measures.

Crimen falsi dicitur cum quis illicitus, cui non fuerit ad hæc data auctoritas, de sigillo, regis rapto vel invento, brevia cartarum consignaverit. The crime of forgery is when any one illicitly, to whom power has not been given for such purposes, has signed writs or charters with the king's seal, either stolen or found.

Crimen felleo animo perpetratum. Crime committed with an evil intent.

Crimen furti. The offence of theft.

Crimen incendi. The offence of arson.

Crimen innominabile. An offence not to be named; an unnatural offence; sexual intercourse against the order of nature.

Crimen læsæ majestatis. The crime of injuring majesty; treason.

Crimen læsæ majestatis omnia alia crimina excedit quoad penam. The crime of treason exceeds all other crimes as to its punishment. See Chapter VI of the Ind. P. C. XLV of 1860.

Crimen raptus. The offence of rape.

Crimen repetundarum. The offence of bribery; extortion or pecuniary corruption.

Crimen roberia. The offence of robbery.

Crimina majora. Greater offences.

Crimina morte extinguuntur. Crimes are extinguished by death. Criminal prosecutions cease upon the death of the offender. No action can be taken against the heir unless such heir has benefited from the wrong committed by his ancestor, as by concealing property known to him to have been stolen by his ancestor. See *Actio penalis*... But the death of the offender does not discharge his property from liability to pay a fine imposed upon him (*Ind. P. C. XLV of 1860, s. 70*). On the other hand, no criminal prosecution can abate by the death of the injured party, because in the generality of criminal cases the Sovereign is the prosecutor, and in his political capacity the Sovereign never dies, *Res nunquam moritur.* See *In restitutionem*...

Cui ante divortium. To whom before a divorce. A writ for a woman divorced, to recover her lands and tenements from him to whom, her husband before the divorce had alienated them during the marriage, when she could not gainsay it (*ipsa contradicere non potuit*).

Cui bono. To what good.

Cuicunque aliquis quid concedit, concedere videtur et id, sine quo res ipsa esse non potuit. Whoever grants a thing to any person is supposed tacitly to grant that also without which the grant itself would be of no effect. See *Quando aliquid conceditur... Accessorium non...*

A grantor is presumed to grant all that is necessary for the enjoyment of the property granted. Where a man having a close surrounded with his land, grants the close, the grantee shall have a way over the

land as incident to the grant (*Pinnington v. Galloway*, 9 Exch. 1; *Indian Easements Act V of 1882, s. 13*). And if the land be granted with the reservation of the close, the grantor shall have a way of necessity to the close, notwithstanding the general rule that a grantor shall not derogate from his grant and that if he intend to reserve any right over the land granted he must reserve it expressly (*Wheeldon v. Burrows*, 12 Ch. D. 31). If a man lease his land and all mines therein, when there are no open mines, the lessee may dig for the minerals (*Saunders's Case*, 5 Rep. 12 a). By the grant of the fish in a man's pond is granted power to come upon the banks and fish for them; and by the grant of fruit-trees, the power to come upon the land to take the fruits of the trees is also granted. (See *Deoki Nandan v. Dhian Singh*, under the maxim *Cujus est solum...*) A tenant-at-will, after notice from his landlord to quit, shall have free entry, egress and regress to cut and carry away the corn (*Trans. of Pro. Act IV of 1882, s. 108 [i]*). If a man give me a license to lay pipes in his land to convey water to mine, I may enter and dig his land, in order to mend the pipes (*Pomfret v. Hicroft*, 1 Saund. 323).

The plaintiff having in a previous suit obtained a decree declaring his right of having the roof of his house projecting over the defendant's land and discharging water thereon, now sued for a declaration of his right to go upon the defendant's land for the purpose of repairing the roof. *Held*, that the plaintiff was entitled to the right claimed as being accessory to the easement already established but that it should be exercised only once a year and after notice to the defendants (*Hayagreeva v. Sami*, 15 Mad. 286).

Where it was found by special verdict that a coal-shoot and certain pipes were necessary for the convenience and beneficial use and occupation of a messuage, and it was held that under the circumstances they passed to the lessee as part of the messuage; it was further held, in accordance with the rule under consideration, that the right to go over the soil of a certain passage in order to use the coal shoot and to use and repair the pipes also passed to the lessee as a necessary incident to the demise, although not mentioned in the lease (*Finchcliffe v. Earl of Kinnoul*, 5 Bing. N. C. 1).

Where a statute empowered one railway company to carry their line across that of another by a bridge, it was held that the former might place temporary scaffolding on the land of the latter, if that were necessary for constructing the bridge (*Clarence R. Co. v. G. N. R. Co.*, 13 M. & W. 706). And generally where an express statutory right is given to make and maintain a thing necessarily requiring a support, the statute, in the absence of a context implying the contrary, means that the right to necessary support of the thing constructed shall accompany the right to make and maintain

it (*London & N. W. R. Co. v. Evans*, 1893, 1 Ch. D. 16; 62 L. J. Ch. 1).

The maxim, however, must be understood as applying only to such things as are incident to the grant and directly necessary to the enjoyment of the thing granted. Thus, if a man grant the fish in his pond, the grantee may not cut the banks to lay the ponds dry, for he can take the fish by nets or other engines (*Per Parke, B.*, 6 M. & W. 189). If a man let a house, reserving a way through it to a back house, where he has some trees which are not included in the lease, he may not use the way but upon request and at reasonable times (*Tomlin v. Fuller*, 1 Vent. 48). A way of necessity is also limited by the necessity which created it, and, when such necessity ceases, the right of way likewise ceases; therefore, if at any later time, the party formerly entitled to such a way can, by passing over his own land reach the place to which it led by as direct a course as that of the old way, the way ceases to exist as of necessity (*Holmes v. Goring*, 2 Bing. 76; 27 R. R. 549; *Pearson v. Spencer*, 1 B. & S. 571; 3 *Ibid.*, 762; *Ind. Ease. Act V* of 1882, ss. 28 and 41).

Cui de jure pertinet. To whom it pertained by right.

Cui in vita. To whom in life. A writ of entry for a widow against him to whom her husband alienated her lands and tenements in his lifetime; which must contain in it that during his life she could not withstand it (*ipsa contradicere non potuit*).

Cui libet in arte sua perito est credendum. Every one who is skilled in his own art or science is to be believed. See *Experto...*

Credence should be given to one skilled in his peculiar profession. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting are relevant facts. Such persons are called experts (*Ind. Evi. Act I* of 1872, s. 45).

Thus in an action against a surgeon for ignorance, the question may turn on a nice point of surgery. In an action on a policy of life insurance physicians must be examined. So, for injuries to a mill worked by running water if occasioned by the erection of another mill higher up the stream, mill-wrights and engineers must be called as witnesses. In like manner it may be necessary for a jury to decide questions of navigation, as in the ordinary case of deviation on a policy of marine insurance, of seaworthiness, or where one ship runs down another at sea through bad steering (*Johnstone v. Sutton*, 1 T. R. 538; 1 R. R. 269). Opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise if the author cannot reasonably be produced before the

court (*Ind. Evi. Act I* of 1872, s. 60). On all matters of public history, literature, science, or art, the court may resort for its aid to appropriate books or documents of reference (*Ibid.*, s. 57). A well known treatise, such as Taylor's Medical Jurisprudence, may be referred to in the course of trial (*Hatim v. Empress*, 12 C. L. R. 86; *Hurry Churn Chuckerbutty v. Empress*, 10 Cal. 140; 13 C. L. R. 358).

Cui licet quod majus non debet quod minus est non licere. He who has authority to do the more important act, shall not be debarred from doing that of less importance. A doctrine founded on common sense, and of general application not only with reference to the law of real property, but likewise to that of principal and agent. See *Omne majus continet...*

Cui pater est populus non habet ille patrem. He to whom the people is father, has not a father.

Cui plus licet quam par est, plus vult quam licet. He to whom more is granted than is just, wants more than is granted.

Cuique enim in proprio fundo quam libet feram quoquo modo venari permissum. Every man is allowed to hunt any wild beast on his own ground, in whatever manner he thinks proper.

Cujusdam ignoti. Of some person unknown.

Cujus est commodum ejus debet esse incommodum. Whose is the advantage, his also should be the disadvantage. See *Qui sentit commodum...*

Cujus est dare ejus est disponere. Whose it is to give, his it is to dispose.

The bestower of a gift has a right to regulate its disposal or to annex qualifications or conditions to his gift provided they are good in law. The maxim sets forth the principle on which the old feudal system of feoffment depended; *tenor est qui legem dat feudo*. But the strictness of the feudal system was from time to time relaxed by statute, and the tenants were allowed to dispose of their lands, which they could not formerly do. See *Alienatio rei...* The maxim is still applicable to modern grants, and the bestower of an estate may annex such conditions to the grant as he pleases, provided that they are not illegal, repugnant or impossible. See the Transfer of Property Act IV of 1882, s. 25, and the Indian Succession Act X of 1865, ss. 113 and 114. As the owner may impose conditions at his pleasure upon the feeoffee, so he may, likewise, by insertion of special covenants in a conveyance or demise reserve to himself rights of easement and other privileges in the land so conveyed or demised, and thus surrender the enjoyment of it only partially, and not absolutely, to the feeoffee or tenant. It must not, however, be inferred that incidents of a novel kind can be devised and attached to property at the fancy or caprice of the owner. No man can attach any condition to his property which is against the public good, nor can

Curia advisari vult post. The court will advise, after.

Curia audientia. Audience Court. A court belonging to the Archbishop of Canturbury and held in his palace having the same authority with the court of arches, though inferior to it in dignity and antiquity. The Archbishop of York hath in like manner his Court of Audience. See *Curia de...*

Curia Camera Stellata. Court of Star Chamber. See *Camera Stellata*.

Curia Cancellaria officina justitia. The Court of Chancery is the workshop of justice.

Curia Christianitatis. Court of Christianity; ecclesiastical courts; Courts-christian.

Curia claudenda. The court to be closed. An obsolete writ to compel another to make a fence or wall, which he was bound to make between his land and the plaintiff's.

Curia comitatus. County court.

Curia de arcibus. Arches Court. The chief and most ancient Court belonging to the Archbishop of Canterbury for the debating of spiritual causes.

Curia domini. The lord's house, hall, or court, where all the tenants meet at the time of keeping courts.

Curia conscientia. Court of conscience. Courts for the recovery of small debts by summary process before commissioners appointed for that purpose.

Curia ecclesiastica. Ecclesiastical Courts; spiritual courts.

Curialitas. The holding of land by courtesy.

Curia martialis. Court martial; a court for trying and punishing the military offences of officers and soldiers.

Curia militaris. Court of chivalry, otherwise called the marshal court. It is now almost entirely out of use.

Curia palatii. The Palace Court. Now abolished.

Curia Parlamenti suis propriis legibus subsistit. The Court of Parliament is governed by its own peculiar laws.

Curia pedis pulverizati. Court of powdered foot. Court of piepowder (*piéd poudre*). A court of record incident to every fair and market, of which the steward of him who owned the toll of the market, was the judge. Its jurisdiction extended to all commercial injuries done as between buyers and sellers in that fair or market, and not in any preceding one. So called because they were most usual in summer when the suitors to the court had *dusty feet*, and from expedition in hearing causes proper thereunto before the dust goes off the feet of the plaintiffs and defendants.

Curia Prærogativa. The court wherein all wills are proved and all administrations taken, which belongs to the Archbishop by his prerogative.

Curia Regis. The King's Court; a term applied to any of the superior courts, but principally to the *Aula regis*, which see.

Curia Requisitionum. Court of Requests. This was a court of Equity of the same nature with the Court of Chancery, but inferior to it, principally instituted for the relief of such petitioners as in conscionable cases addressed themselves by supplication to the King.

Curiosa et captiosa interpretatio in lege reprobatur. A nice and captious interpretation is reprobated in law, as not likely to have been in the mind of the legislator.

Currente calamo. With a running pen.

Currit tempus contra desides et sui juris contemptores. Time runs against the slothful and those who slight their own rights. See *Vigilantibus non...*

Cursus curia est lex curia. The practice of the Court is the law of the Court. Where a practice has existed, it is convenient, except in cases of extreme urgency and necessity, to adhere to it, because it is the practice, even though no reason can be assigned for it (*Bovill v. Wood* 2 M. & S. 25; *Edwards v. Martyn*, 17 Q. B. 693; 21 L. J. Q. B. 88). Hence if any necessary proceeding in an action be informal, or be not done within the time limited for it, or in the manner prescribed by the practice of the Court, it may sometimes be set aside for irregularity, for *via trita est via tuta* (*Wood v. Hurd*, 3 B. N. C. 45). Section 135 of the Indian Evidence Act I of 1872 provides that the order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Curtilagium. A court-yard, back-side, or piece of ground lying near and belonging to a dwelling-house.

Curtiles terra. Court lands. Those appropriated to the house or Court of the lord, and not let out to tenants.

Curtis. Of the court; courtesy.

Custantia. *Custugium.* Costs.

Custode admittendo. A writ for the admitting of the guardians.

Custode amovendo. A writ for the removing of the guardians.

Custodes. Keepers.

Custodiâ. Custody; keeping.

Custodia leges. Custody of the law or Court.

Custodiâ mareschalli. In the custody of the marshal.

Custodiam committatus. The charge of the county.

Custos brevium. The keeper of the writs: a principal clerk in the Court of Common Pleas.

Custos brevium et rotulorum. Keeper of the writs and rolls in the Court of King's Bench.

Custos forestæ. Keeper of the forest.

Custos magni sigilli. Keeper of the Great Seal.

Custos maris. An admiral.

Custos morum. The guardian of manners or morals of the nation. An expression applied to the Court of Queen's Bench.

Custos placitorum coronæ. The keeper of the pleas of the crown.

Custos privati sigilli. Keeper of the Privy Seal.

Custos rotulorum. Keeper of the rolls, or records of the county. The principal Justice of the Peace within the county.

Custos spiritualium. Guardian of the spiritualities. He who exercises spiritual or ecclesiastical jurisdiction in any diocese during the vacancy of a see.

Custos statum hæredis in custodiâ existentis meliorem, non deteriorem, facere potest. A guardian can make the estate of an existing heir under his guardianship better, not worse. See *Meliorem conditionem*...

Custos temporalium. Guardian of the temporalities. He to whose custody a vacant see or abbey was committed by the king as supreme lord. He had to give an account of the goods and profits thereof.

Custuma. Customs; duties.

Custuma antiqua et magna. Ancient and great duties. The old export duties on wool, sheepskins or woollens, and leather.

Custuma parva et nova. Small and new duties. The alien's duties on imported and exported commodities.

Cy-pres. Near thereto. When the intention of the donor or testator is incapable of being literally acted upon, or where its literal performance would be unreasonable or in excess of what the law allows, the courts will often order the intention to be carried into effect *cy pres*, i. e., as nearly as may be practicable, or reasonable or consistent with law. In the case of charitable trusts if the intention of the donor cannot be literally executed, the court will adopt another mode consistent with the general intention, so as to execute it, though not in mode, yet in substance. Where the sum of money is found too large for the charitable purpose to which it has been devoted, or for some other reason cannot be applied thereto, the court will apply the sum or the surplus on a new scheme to other charitable purposes upon the principles of the original charities. See *Benignæ faciendæ*...

A testator directed his executor to set apart a sum of Rs. 7,000 to provide a fund for or towards the education of two or more boys at St. Paul's School, Calcutta. The testator died in 1867. In 1864, the St. Paul's School, Calcutta, was removed to Darjeeling. In St. Paul's School, Calcutta, the fees for day-scholars and day-boarders were Rs. 8 and Rs. 10, respectively. In the St. Paul's School, Darjeeling, there were no day-scholars nor any day-boarders, and the cost of a regular boarder would be about Rs. 400 per annum. *Held*, that the gift did not lapse, being a general charitable bequest, and that under the circum-

stances it must be executed *cy-pres* (*Malchus v. Broughton*, 11 Cal. 591).

For a similar case, see *Longbottom v. Sator* (1 Mad. H. C. R. 429).

D

Damna clericorum. Damage-clear. A fee formerly payable by the plaintiff in actions in which the damages were uncertain. The amount of damages being ascertained by the judgment, one-tenth of the same was payable in the Common Pleas, and one-twelfth in the King's Bench, before the plaintiff could obtain execution.

Damnosa hæreditas. (*Rom. L.*) A disadvantageous or unprofitable inheritance, i. e., an inheritance of which the liabilities exceed the assets. An inheritance which disclosed some enormous unsuspected liability.

Damnum absque injuria. A loss without injury or wrongful act. In such a case no action is maintainable. Thus if I have a mill and my neighbour builds another mill on his own ground, whereby the profit of my mill diminishes, yet no action lies against him, for every one may lawfully erect a mill on his own ground. So in cases of rival shops or school-houses.

Damnum emergence. The disclosure of an unsuspected damage or liability. See *Damnosa hæreditas*.

Damnum facio. Doing damage; damage-feasant; commonly applied to the beasts of a stranger wandering in another man's ground and doing damage.

Damnum fatale. Fatal damage i. e., damage caused by a fortuitous event or inevitable accident, as by ship-wreck, lightning, superior force, or robbery, but not by theft. Bailees are not liable for such losses.

Damnum infectum. Imminent danger. A damage not yet committed, but threatenend or impending.

Damnum sentit dominus. The damage falls to the owner. See *Res perit*...

Damnum sine injuriâ esse potest. There may be damage inflicted without any injury or wrongful act. See *Damnum absque*...

Dare ad remanentiam. To give away in fee, or for ever. This seems to be only of a remainder.

Darrein. A corruption from the French *dernier*, last.

Darrein continuance. See *Puis darrein*...

Darrein presentment. Last presentation. An assize of *darrein presentment* was a writ which lay when a man or his predecessors had presented a clerk to a benefice, who was instituted; and afterwards upon the next avoidance, a stranger presented a clerk and thereby disturbed him that was the real patron. The patron had this writ directed to the sheriff to summon an assize or jury to enquire who was the last patron that presented to the church. See *Quare impedit*.

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Datio. A giving; allotting; making over.

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De damnis. Of damage or losses.

De die in diem. From day to day; continuously. Thus we speak of a sitting *de die in diem* until a case is concluded.

Dedi et concessi. I have given and granted. The operative words in grants which formerly implied a warranty of title, but implying no such warranty at the present day.

Dedimus potestatem. We have given the power. A writ or commission to one or more private persons for the speeding of some act appertaining to a judge or a court. The writ was also issued for empowering a party to appoint an attorney (*Dedimus potestatem de attorney faciendo*).

De donis. Of gifts. The statute of Westminster the second, 18 Edw. 1, st. 1, c. 1, *De donis conditionalibus*, which provided that in grants to a man and the heirs of his

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De damnis. Of damage or losses.

De die in diem. From day to day; continuously. Thus we speak of a sitting *de die in diem* until a case is concluded.

Dedi et concessi. I have given and granted. The operative words in grants which formerly implied a warranty of title, but implying no such warranty at the present day.

Dedimus potestatem. We have given the power. A writ or commission to one or more private persons for the speeding of some act appertaining to a judge or a court. The writ was also issued for empowering a party to appoint an attorney (*Dedimus potestatem de attorney faciendo*).

De donis. Of gifts. The statute of Westminster the second, 13 Edw. 1, st. 1, c. 1, *De donis conditionalibus*, which provided that in grants to a man and the heirs of his

body or the heirs male of his body, the will of the donor should be observed according to the form expressed in the deed of gift; and that the tenements so given should go, after the death of the grantee to his issue (or issue male, as the case might be), if there were any; and if there were none, should revert to the donor. This statute gave rise to the estate in tail, or *feudum talliatum*, generally called an estate tail, or entail.

De donis conditionalibus. Of conditional gifts.

Deductio. A species of *compensatio*, but instead of being, of money against money, or of debt against debt, it might be of articles of different nature, *e. g.*, wool against wheat, or wheat against money, and so forth.

De eo, quod quis post mortem suam fieri velit. Of that which a man wishes to be done after his death.

De essendo quietum de tolonio (or *theolonio*). Of being quiet about a toll. A writ which lay for those who were by privilege free from the payment of toll. Now abolished. See *Essendi*...

De estoveriis habendis. Of recovering alimony. A kind of writ. See *Estoveriis*...

De excommunicato capiendo. Of taking an excommunicated person.

De excommunicato deliberando. Of releasing an excommunicated person.

De executione judicii. Of execution of judgment.

De expensis civium et burgenisium. An obsolete writ addressed to the sheriff to levy the expenses of every citizen and burghess of parliament.

De expensis militum. A writ to the sheriff to levy the expenses of the knights of the shire for attendance in parliament.

De facto. In fact, as opposed to *de jure*, of right. This is an expression indicating the actual state of circumstances, independently of any remote question of right or title; thus, a king *de facto* is a person acknowledged and acting as king, independently of the question whether someone else has a better title to the crown: in which sense it is opposed to a king *de jure* (of right) who has right to a crown but is out of possession.

De falso judicio. Of false judgement. A writ that lay for him that had received false judgment in a county court.

Defamatio. Defamation.

Defectus sanguinis. Failure of issue.

Defendimus. We will defend. A word in a feoffment or donation binding the donor and his heirs to defend the donee, if any man go about to lay any servitude, *i. e.*, to claim any incumbrance, upon the thing given, other than is contained in the donation.

Defendere se per corpus suum. To defend himself by his body. To offer duel or single combat as a legal trial and appeal.

Defendere unius manu. To wage law; a denial of an accusation upon oath. See *Vadiutio legis*.

Defensum. An enclosure of land; any fenced ground.

Deficiente uno sanguine non potest esse hæres. One blood being wanting, he cannot be heir.

Deficit. Something wanting.

De fide et officio judicis non recipitur quæstio; sed de scientia sive sit error juris sive facti. The good faith and honesty of a judge cannot be questioned; but otherwise concerning his knowledge, whether he be mistaken as to the law or as to the fact, *i. e.*, his decision may be impugned for error either of law or of fact.

It is a general rule of great antiquity, that no action will lie against a judge for any act done by him in the exercise of his judicial functions, provided such act, though done mistakenly, were within the scope of his jurisdiction. This freedom from action at the suit of an individual is given by law to the judges, not so much for their own sake as for the sake of the public, and for the advancement of justice, that being free from actions, they may be free in thought and independent in judgment, as all who are to administer justice ought to be. See Act XVIII of 1850 (Protection of judicial officers). But although the honesty of a judge acting in his judicial capacity cannot be questioned, his errors may be corrected by appellate tribunals.

A judge, however, is not excused for neglect of duty or misconduct, or a *fortiori* for corruption (*Ind. P. C. XLV* of 1860, ss. 164-5).

Under the provisions of s. 1 of Act XVIII of 1850, no person acting judicially is liable for an act done or ordered to be done by him in the discharge of his judicial duty within the limits of his jurisdiction. In such a case the question whether he acted in good faith does not arise (*Meghraj v. Fakir Hussain*, 1 All. 280); and the fact that he acted with gross and culpable irregularity does not deprive him of the protection afforded by the Act (*Teyen v. Ram Lal*, 12 All. 115). A plaint against a judge averring that he knowingly and maliciously issued an illegal order to the plaintiff's injury, does not disclose a sufficient cause of action against the judge. It must not only aver that the judge had no jurisdiction, but also that he had no reasonable or probable cause for supposing that he had jurisdiction (*Pralhad Maharudra v. A. C. Watt*, 10 Bom. H. C., A. C., 346).

Act XVIII of 1850 does not protect a Magistrate who has not acted with due care and attention. The mere absence of *mala fides* is no defence. When a Magistrate violates the plain language of the law, and the very first principles of judicial inquiry, his proceedings presumably are characterised by want of care (*Turalmatli*

Mooknapadhyā v. Collector of Hooghly, 4 B. L. R., A. C., 37).

An officer commanding in cantonments, acting *bona fide*, in discharge of his public duty, and under the belief that a person was dangerous by reason of insanity, caused him to be arrested and detained in his house for medical examination. The medical officers, while reporting him sane, recommended that he should be placed under the observation of the civil surgeon of the station, for which purpose the same officer caused his further detention. The commanding officer, who under Act XXII of 1864, s. 11 had control and direction of the police in the cantonment, did not proceed or intend to proceed under s. 4 of Act XXXVI of 1858 (Lunatic Asylums). *Held*, that although his belief might have justified the commanding officer if he had proceeded under the provisions last mentioned, yet he not having done so and not having any legal authority for what he had done, was not protected from liability in respect of the above acts (*Sinclair v. Broughton*, 9 Cal. 341; 13 C. L. R. 185; L. R. 9 L. A. 152).

An action of defamation cannot be maintained against a judge for words used by him whilst trying a cause in court, even though such words are alleged to be false, malicious, and without reasonable cause (*Raman Nayar v. Subramanya Ayyar*, 17 Mad. 87).

Nothing is an offence which is done by a judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law (*Ind. P. C. XLV* of 1860, s. 77).

The refusing or accepting of bail is a judicial, not merely a ministerial, duty, and a mistake in the performance of that duty, without malice, will not be sufficient to sustain an action (*Paramkusam Narasaya v. Captain R. A. C. Stuart*, 2 Mad. H. C. R. 396).

Wilful abuse of his authority by a judge, *i. e.*, wilfully acting beyond his jurisdiction, is a good cause of action by the party who is thereby injured (*Anniappa Mudali v. Moulavi Mahomed Mustafa Saib*, 2 Mad. H. C. R. 443).

A Magistrate ordered the removal of the plaintiff's house under the Crim. Pro. Code upon the ground that it was a nuisance and obstruction to the public thoroughfare. *Held*, that the house was neither an obstruction nor a nuisance, and that the Magistrate had no jurisdiction to direct its removal; but he having acted in his judicial capacity, and in good faith believed himself at the time to have jurisdiction, a suit for damages could not be maintained against him (*Seshairangar v. R. Ragunatha Row*, 5 Mad. H. C. R. 345; *R. Ragunatha Row v. Nathamuni*, 6 Mad. H. C. R. 423).

But a Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another court is not a Judge (*Ind. P. C. XLV* of

1860, s. 19, *illus.* [d]), and an improper remand or refusal of bail would not seem to be a judicial act, but would be actionable on proof, at least, of malice (*Collett on Torts*).

See *Qui jussu judices...*

De fidelitate. Of fidelity.

Deforciamentum. Deforcement. A species of injury by ouster or privation of the freehold where the entry of the present tenant or possessor was originally lawful, but his detainer is now become unlawful. Wrongful withholding of lands or tenements from the right owner.

Deforciare. To withhold property from the rightful owner.

Deforciatio. A distress. A holding of goods for satisfaction of a debt.

De frangentibus prisonam. Of those breaking a prison: concerning prison-breach.

Degradatio. Degradation; an ecclesiastical censure, whereby a clergyman is divested of his holy orders.

De gratia. As a favour.

De gratia speciali, certâ scientiâ, et mero motu, talis clausula non valet in his in quibus præsumitur principem esse ignorantem. The clause "Of our special grace, certain knowledge, and mere motion" is of no avail in those things in which it is presumed that the prince was ignorant.

The clauses referred to occur in royal grants, or letters patent. Even where the king's grant purports to be made "of our special grace, certain knowledge, and mere motion," the grant will be void, if it appears to the Court that the king was deceived in the purpose and intent thereof.

De grossis arboribus decimæ non dabuntur, sed de sylvâ cædruâ decimæ dabuntur. Of whole trees, tithes are not given; but of wood cut to be used, tithes are given.

De hæretico comburendo. Of burning a heretic at the stake. Statute 2 Hen. IV, c. 15. A writ that lay for burning him who having once been convicted of heresy by the bishop, afterwards fell again into the same or some other heresy, and was thereupon delivered over to the secular power in order that he might be burnt.

De homine replegiando. Of replevying a man out of prison. See *Elongatus*.

Dehors. (*Fr.*) Outside; without; foreign to the subject.

De idiotâ inquirendo. Of enquiring as to an idiot; a writ to inquire whether a man be idiot or not.

Dei gratia. By the grace of God.

Dei judicium. The judgment of God. The old Saxon trial by *ordeal* was so called, because it was regarded as an appeal to God for the justice of a cause.

De incremento. Of increase. Costs *de incremento* are those extra expenses incurred, which do not appear on the face of the proceedings, such as witnesses' expenses, fees to counsel, attendances, Court fees, &c.

De injuria. Abbreviated from *De injuriâ suâ propriâ*, of his own wrong.

De injuriâ suâ propriâ. Of his own wrong.

De injuriâ suâ propriâ absque residua causâ. Of his own wrong without any other cause.

De injuriâ suâ propriâ absque tali causâ. Of his own wrong without such cause. See *Absque tali...*

De injuriis. Of wrongs.

De integro. Afresh; anew.

De jure. By right, as opposed to *de facto*, in fact. See *De facto*.

De jure decimerum originem ducens de jure patronatus eum cognitio spectat ad legem civilem, i. e., communem. With regard to the right of tithes, deducing its origin from the right of the patron, then, the cognizance of them belongs to the civil law, *i. e.*, the common law.

De jure judices, de facto juratoris, respondent. The judges answer to the law, the jury to the fact. See *Ad questiones facti...*

De la plus Belle. Of the fairest (land). Dower *de la plus Belle* was where the wife was endowed with the fairest part of her husband's estate.

Delator. An accuser; an informer.

Delatura. An accusation; an information. Also the reward of an informer.

Del credere. Of belief or trust. Surety to ones principal. Where an agent or seller undertakes to guarantee to his principal, the payment of the debt due by the buyer, he is called a *del credere* agent. The phrase is borrowed from the Italian language.

Delectus personæ. Choice of a person. This is the right of a firm of partners to prevent the admission of any third person into the firm against the wish of the partners although nominated or put forward by one of the partners. See s. 253 (6) of the Ind. Con. Act IX of 1872.

Delegata potestas non potest delegari. A delegated power cannot be delegated.

Delegatus non potest delegare. A delegate cannot delegate. A person delegated cannot transfer his trust to another. The person to whom an office or duty is delegated cannot lawfully devolve the duty upon another, unless he be expressly authorized to do so. See *Vicarius...* One agent cannot lawfully appoint another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade, a sub-agent may, or from the nature of the agency, a sub-agent must, be employed (*Ind. Con. Act IX of 1872, s. 190*). For a principal employs an agent from the opinion which he has of his personal skill and integrity, and the agent has no right to turn his principal over to another.

So a trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (*a*) the instrument of

trust so provides, or (*b*) the delegation is in the regular course of business, or (*c*) the delegation is necessary, or (*d*) the beneficiary, being competent to contract, consent to the delegation. But the appointment of an attorney or proxy to do an act merely ministerial, and involving no independent discretion, does not amount to delegation (*Ind. Trusts Act II of 1882, s. 47; Johnston v. Osenton, L. R. 4 Exch. 107*). An arbitrator cannot lawfully devolve his duty on another; nor can an individual, clothed with judicial functions, delegate the discharge of those function, to another, unless he be expressly empowered to do so, for the ordinary rule is that although a ministerial officer may appoint a deputy, a judicial officer cannot (*Walsh v. Southworth, 6 Exch. 150; Trans. of Pro. Act IV of 1882, s. 6 [f]*).

Deliberai faci. I have made deliverance. A return by the sheriff to the writ of *hominem replegiando*.

Deliberandum est diu quod statuendum est semel. That which is to be resolved once for all, should be long deliberated upon.

Delictus debitor est odiosus in lege. A luxurious debtor is odious or hateful in law.

Delinquens per iram provocatus puniri debet mitius. A delinquent provoked by anger ought to be punished more mildly.

De lunatico inquirendo. Of inquiring into a person's lunacy. This is analogous to the obsolete *De idiotâ inquirendo*.

De medietate linguæ. Of a moiety of tongue. See *Bilinguis*.

De melioribus damnis. Of making the damage better. Where the jury by mistake, severed the damages between the several defendants in an action of trespass, the plaintiff might cure the defect by taking judgment *de melioribus damnis* against one, and entering *a nolle prosequi* as to the others.

Dementia accidentalis vel adventitia. Madness which is accidental or adventitious, *i. e.*, not arising from birth.

Dementia affectata. Affected or pretended madness. Madness by drunkenness.

Dementia à nativitate. Madness from birth. Also called *dementia naturalis*, natural madness.

De mercatoribus. Relating to merchants.

De minimus non curat lex. The law pays no regard to trifling matters. The law does not concern itself about trifles.

There are some injuries of so little consideration in the law that no action will lie for them. Courts of law, generally do not take trifling and immaterial matters into account, unless where the right of a party is involved. A bequest of such part of the testator's plate as the legatee shall select, entitles the legatee to take the whole, for he might select the whole except one trifling article, and the law will not care for the remaining trifling article (*Arthur v. Mackinnon, 11 Ch. D. 385*). But in cases

of an infringement of a right, an action may be maintained, though no pecuniary damage may be shown. See *Injuria cum damno*. Where the amount of a poor-rate at so much in the pound on the assessable value of premises involved the fraction of a farthing, a demand by the overseer of the whole farthing was held excessive and illegal (*Morton v. Brammer*, 8 C. B. N. S. 791).

So, under the criminal law, nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause any harm, if that harm is so slight, that no person of ordinary sense and temper would complain of such harm (*Ind. P. C. XLV of 1860, s. 95*). The taking of almost valueless pods from a tree standing upon Government waste ground was held to be no offence under the above section (*Reg. v. Kasya bin Raxji*, 5 Bom. H. C. Cr. Ca. 35). In a case where the accused being annoyed at the rejection of a petition presented by him, struck a District Superintendent of Police a blow across the chest with an umbrella, it was held that the pain caused was not of such a trivial character as to bring the case within the above section (*In re Sheo Gholam Lalla*, 24 W. R. Cr. 67).

The Law Commissioners, in framing s. 95 of the Indian Penal Code, state:—"This section is intended to provide for those cases which, though from the imperfection of language they fall within the letter of the law, are yet not within its spirit, and are all over the world considered by the public, and for the most part dealt with by the tribunals, as innocent. As our definitions are framed, it is theft to dip a pen in another man's ink, mischief to crumble one of his wafers, and assault to cover him with a cloud of dust by riding past him, hurt to incommode him by pressing in getting into a carriage. There are innumerable acts, without performing which men cannot live together in society, acts which all men constantly do and suffer in turn, and which it is desirable that they should do and suffer in turn, yet which differ only in degree from crime. That these ought not to be treated as crime is evident, and we think it far better expressly to except them from the penal clauses of the Code than to leave it to the Judges to except them in practice."

Where a Railway guard on a reasonable suspicion said to a passenger in the presence of others "I suspect you are travelling with a wrong (or false) ticket," held, in an action for defamation, that the plaintiff was not entitled to a decree for damages (*South Indian Railway Co. v. Ramakrishna*, 13 Mad. 84).

It must be observed, however, that for an injury to *real property incorporeal*, an action may be supported, however small the damage, although the injury consists merely in the act of walking over it, and no damage is done to the soil or anything;

a commoner may maintain an action for an injury to the common, though his portion of the damage amount only to a farthing (*Pindar v. Wordsworth*, 2 East, 154; 6 R. R. 412).

The Indian Registration Act III of 1877, s. 87, provides that nothing done by a Registering Officer pursuant to the Act shall be deemed invalid merely by reason of any defect in his appointment or procedure. Nor is a new trial to be granted for improper admission or rejection of evidence if it appears to the Court that independently of the evidence objected to and admitted, there was other evidence sufficient to justify the decision, or that if the rejected evidence had been received it ought not to have varied the decision (*Ind. Evi. Act I of 1872, s. 167*).

On the same principle the law does not regard the fraction of a day. See *Fractionem diei...*

De minoribus rebus principes consultant, de majoribus omnes. On minor matters the chieftains consult, on important subjects, all debate.

Demissio regis vel coronæ. The demise of the king, or of the crown. See *Rex nunquam moritur*.

De molendino de novo erecto non jacet prohibitio. A prohibition lies not against a newly erected mill.

Demorari. To abide; to demur.

Demoratur. He abides; he demurs.

De morte hominis nulla est cunctatio longa. Concerning the death of a man no delay is long. See *De vita...*

Demy-sanguis. Half-blood; the relation in which two sons or daughters of the same father, but of different mothers, stand to each other. See *Consanguineus*.

Denarii. A general term for any sort of *pecunia numerate*, or ready money.

Denarius Dei. God's penny, or earnest given and received by parties to a contract, &c., paid in former times to the church or poor.

De nautico fœnore. Of nautical interest or usury; bottomry.

De nihilo nihil fit. From nothing nothing is produced. See *Non dat...*

Denominatio fieri debet a dignioribus. Denomination should be deduced from the more worthy.

Denominatio fit a dignioribus. The proper name is the more worthy of all denominations.

De nomine proprio non est curandum cum in substantiâ non erratur; quia nomina mutabilia sunt res autem immobiles. As to the proper name, it is not to be regarded where it errs not in substance; because names are changeable, but things immutable. See *Præsentia corporis...*

De non apparentibus, et non existentibus, eadem est ratio. As to things

not apparent, and those not existing, the rule is the same. Things non-apparent are to be considered as non-existent. Things not alleged (or at all events not proved in evidence) are as good as not existing, and therefore cannot be entertained. See *Quod non apparet...*

In the law of evidence, where he on whom the onus of proving an affirmative lies fails in such proof, the contrary is presumed, though there be no evidence in support of that presumption.

Where a party seeks to rely upon any deeds or writings which are not produced in Court, and the loss of which is not accounted for or supplied in the manner prescribed by law, they should be treated, as against such party, as if non-existent. In reading an affidavit also, the court will look solely at the facts deposed to and will not presume the existence of additional facts in order to support the allegations made in it. See *Judex bonus... Judicis est judicare...*

Where a notice of dishonour of a bill described the bill generally as "Your draft on A. B.," held that if there were other bills or drafts to which the notice could refer, it was for the defendant to show such to be the fact; and that as he had not done so, the above maxim applied, and the Court could not presume that there were any (*Shelton v. Braithwaite*, 7 M. & W. 436; *Bromage v. Vaughan*, 9 Q. B. 608; *Mellersh v. Rippen*, 7 Exch. 578).

As to the application of this maxim to land acquired by alluvion, see *Quod per alluvionem...*

De non decimando. A claim to be entirely discharged from the tithes, and to pay no compensation in lieu of them. Thus the king by his prerogative is discharged from all tithes. So a vicar shall pay no tithes to the rector, nor the rector to the vicar for *ecclesia decimas non solvit ecclesie*, the church pays not tithes to the church. See *Decimæ de decimatis...*

De non ponendis in assisis et juratis. Of being exempted from attending in assizes and juries.

De non residentiâ clerici regis. An ancient writ, where a parson was employed in the king's service, to excuse and discharge him of non-residence.

De novo. Afresh; anew; over again. To begin *de novo* is to begin again from the beginning.

De nullo, quod est suâ naturâ indivisibile, et divisionem non patitur, nullam partem habebit vidua, sed satisfaciatur ei ad valentiam. A widow shall have no part of that which in its own nature is indivisible, and is not susceptible of division; but let the heir satisfy her with an equivalent.

De nullo tenemento, quod tenetur ad terminum, fit homagii; fit tamen inde fidelitatis sacramentum. For no tenement which is held for a term is there the oath of homage, but there is the oath of fealty.

Deo dandum. To be given to God. See *Omnia quæ movent...*

De odio et atia. From hatred and ill-will. A writ formerly issued, commanding the sheriff to inquire whether a prisoner charged with murder was committed on general cause of suspicion, or merely *propter odium et atiam*, for hatred and ill-will; with the view, if the latter was found to be the case, of afterwards issuing another writ to admit him to bail.

De officio coronatoris. Of the office of a coroner. Statute 4 Edw. I, st. 2.

De onerando pro ratâ portionis. A writ that was available for one who had his goods seized for a rent that ought to be paid by others proportionably with him.

De pace et legalitate tuendâ. For keeping the peace and good behaviour.

De parco fracto. Of pound-breach. See *Parco fracto*.

De partitione faciendâ. Of making partition.

Depopulatio agrorum. Destroying and ravaging a country.

Depositarius. Holder of a deposit.

Depositum. A deposit. See *Miserabile...*

Depositum est quod custodiendum alicui datum est. A deposit is that which is given in custody of another.

De prerogativa regis. Of the prerogative of the king. The Statute 17 Edw. 3, st. 1, which directs that the king shall have ward of the lands of natural fools (*i. e.* idiots), taking the profits without waste or destruction, and finding them necessities, and after the death of such idiots, he shall render the estate to the heirs.

Deprivatio à beneficio. The depriving a man of his promotion or benefice.

Deprivatio ab officio. The depriving a man of his office; which is also called *depositio* or *degradatio*.

De proavo. See *Mort d'ancestor*.

De probrrioribus et potentioribus comitatus sui in custodes pacis. That the most upright and capable persons of the county be elected keepers of the peace.

De proprietate probandâ. Of proving to whom the property belonged.

Deputatus. A deputy.

De questu suo. Of his own gain.

De quibus sur disseisin. An old writ of entry, otherwise called a writ of *sur disseisin en le quibus*, which lay where a man was disseised of lands or tenements, or rents, or offices in which he had an estate of freehold, or where a man claimed through ancestors or predecessors who had been disseised. Now abolished.

De quodam ignoto. Of some person unknown.

De rationabili parte. Of a reasonable part. A writ which lay when one of two coparceners usurped the sole possession, to the injury of the other.

De rationabili parte bonorum. Of a reasonable part of the goods. A writ anciently given to the wife and children of a deceased person to recover a reasonable part of his personal estate, which he could not bequeath away from them. This is now abolished, for a man has a full power of disposition over his goods and chattels. See *Querela inofficiosa*...

De religiosis. Of religious matters.

De retorno habendo. Of having a return.

Derivativa potestas non potest esse major primitiva. The derivative power cannot be greater than the primitive. See *Assignatus utitur*... *Nemo plus juris*...

Dernier resort. The last shift.

De scandalis magnatum. Of the defamation of great men.

Descendit itaque jus, quasi ponderosum quid cadens deorsum recta linea, et nunquam reascendit. A right descends, like a heavy body falling downwards, in a direct line, and never re-ascending. See *Hereditas nunquam*...

Descriptio personæ. The description of a person.

De se. Of himself.

De secundâ superoneratione. A writ of second surcharge. If, after the right of common of the defendant has been ascertained by admeasurement, the same defendant surcharges the common again, the plaintiff may have a writ *de secundâ superoneratione*.

Desideratum. Anything wished for; a requisite. Plural, *Desiderata*.

Designatio justiciariorum est à rege; jurisdiction vero ordinaria à lege. The appointment of justices is by the king; but their ordinary jurisdiction by the law.

Designatio personæ. The designation of a person.

Designatio unius est exclusio alterius, et expressum facit cessare tacitum. The specifying of one is the exclusion of another, and that which is expressed makes that which is understood to cease. See *Expressio unius*...

De similibus ad similia eadem ratione procedendum est. From similars to similars, we are to proceed by the same rule.

De similibus idem est iudicium. Concerning similars, *i. e.*, in like cases, the judgment is the same. In England and in India, considerable weight is attached to previous decisions of a co-ordinate Court, while those of a superior Court are regarded as authoritative. In India, where there are several High Courts, it has been held that the lower Courts are bound to follow the concurrent decisions of the Court to which they are subordinate, and are not at liberty to adopt a contrary opinion expressed by another High Court (*Korban Ali Mirza v. Sharada Proshad*, 10 Cal. 82; 13 C. L. R. 255; *Swami Rao v. Kashinath*, 15 Bom. 419; *Balaji v. Sakharam*, 17 Bom. 555;

Imam Ali v. Saadat Ali, All. W. N., 1882, p. 106; *Sheo Narain Rai v. Sheopal Rai*, Ibid., 1894, p. 14).

With reference to the application of English cases to matters before Indian Courts it has been observed by the Madras High Court that the existence in England of two sets of Courts, administering justice upon different processes, renders a resort in this country to English cases and dicta, somewhat perilous, unless this distinction is constantly kept in mind; a principle for the guidance of our Courts can only be eliminated from a careful consideration of what would be the joint operation of courts of Law and of Equity in the particular case (*Peddammuthulaty v. N. Timma Reddy*, 2 Mad. H. C. R. 270).

See *Ubi eadem ratio*... *Stare decisis*.

Desinit debitor esse is qui nactus est exceptionem justam nec ab æquitate naturali abhorrentum. He is no longer a debtor who has a defence that is righteous and consistent with natural equity.

De societate. Of a company or society.

De son done. Of his gift.

De son tort. Of his wrong. An executor *de son tort* is one, who without any just authority, intermeddles with the goods of a deceased person, as if he had been duly appointed executor. Probate is necessary to complete the title of a rightful executor, and until it is actually taken out, a person intermeddling with the assets of the deceased constitutes himself executor *de son tort*, and, therefore, is liable to the rightful executor or to any legatee or creditor of the deceased to the extent of the assets which may have come to his hands (*Navabai v. Pestonji*, 21 Bom. 400; *Ind. Suc. Act X of 1865, ss. 265-6*). See *De injuria*...

De son tort demesne sans tiel cause. Of his own wrong without such cause. See *Abque tali causâ*.

Desuetudo. Discontinuance; disuse.

De terris acquisitis et acquirendis. Of lands acquired and to be acquired.

De terris mensurandis. Of lands to be measured.

Detinendo. Detinue. A writ which lay against him who, having goods or chattels delivered to keep, refused to re-deliver them.

Detinet. He detains. An action of debt, which lay for the specific recovery of goods under a contract to deliver them. See *Debet et detinet*.

Detinuit. He hath detained.

De transgressione super casum. A writ of trespass on the case.

Detur digniori. Let it be given to the more worthy, *i. e.*, to one who is more worthy or deserving of it than another or any one else. "There is no rule," observed Lord Kenyon, C. J., "better established respecting the disposal of every office in which the public are concerned, than this, *detur digniori*. On principals of public policy, no

money ought to influence the appointment to such offices." See *Quando jus domini...*

De ulterioribus damnis. Of further damages.
De una medietate. Of one moiety.

Deus solus hæredem facere potest, non homo. God alone, and not man, can make an heir.

In English Law it is a common maxim that only God can make the heir-at-law of a deceased person, and that man can make the devisee only. The maxim means that circumstances not entirely within the control of a person concur in constituting his heir-at-law at the date of his death. The maxim naturally excludes everyone who is not a man's own child or kin; and it is still the law of England. But under Hindu Law, a man is allowed to make an heir by adoption when he has no issue of his own.

The Mahomedan Law does not recognize adoption so as to confer rights of inheritance. But a child born out of wedlock, if acknowledged, acquires the status of legitimacy. An acknowledgement by a Mahomedan that a certain person is his son establishes the fact acknowledged. Such acknowledgment is valid when the ages of the parties admit of the relationship between them, and where the descent of the party acknowledged has not been already established from another (*In re Mussamat Bibi Najibunnissa*, 4 B. L. R., A. C., 55).

But this doctrine of acknowledgment is not applicable to a case in which the paternity of the child is known, and it cannot therefore be called in to legitimize a child which is illegitimate by reason of the unlawfulness of the marriage of its parents (*Aizunnissa Khatoon v. Karimunnissa Khatoon*, 23 Cal. 130; *Muhammad Allahdad Khan v. Muhammad Ismail Khan*, 10 All. 289).

See *Hæres legitimus...*

De uxore abductâ cum bonis viri. Of the wife carried away with the goods of the husband.
Devastavit. He hath wasted.

Devastaverunt bona testatoris. They have wasted the goods of the testator, *i. g.*, where executors have paid legacies of a testator before his debts have been satisfied, or have otherwise mismanaged his estate. The waste or misapplication of the assets of a deceased person committed by an executor.

Devererunt. A writ formerly directed to the escheator, when any of the king's tenants *in capite* (see *Capite*) died, and when his son and heir, within age, and in the king's custody, also died, commanding the escheator to inquire what lands or tenements by the death of the tenant came to the king.

Devenio vester homo, I become your man.

De ventre inspiciendo. Of inspecting the womb. See *Ad ventrem...*

De vicineto. Of or from the neighbourhood, from which, in ancient times, the jury were always summoned.

De viridi et vinatione. Of vert and vension.

Devisavit vel non. Whether the testator did devise or not. An issue or inquiry whether a man had in fact made a devise (*i. e.*, a will of lands) or not, or whether or not a paper (asserted to be a will) was his will, directed by the Court of chancery upon a bill being brought by the party claiming as devisee to have the will established.

De vita hominis nulla cunctatio longa est. When the life of a man is concerned or is at stake, no delay that is afforded can be too long. By this humane maxim it is intimated that, as the effect of a rash sentence cannot be recalled we should pause and deliberate before we consign a fellow-creature to death.

Dextras dare. To shake hands in token of friendship. To give up oneself to the power of another person.

Diarium. A daily allowance of food or pay.
A diary; a journal.

Dictor. An arbitrator.

Dictum. An order; award; arbitrament; a saying or opinion of a judge. Plural, *Dicta.* See *Obiter dictum.*

Diem clausit extremum. He has closed or concluded the last day of his life. He has died. A writ of extent directing the sheriff, on the death of a Crown-debtor, to inquire by a jury when and where the Crown-debtor died, and what chattels, debts, and lands he had at the time of his decease, and to seize them into the Crown's hands.

Dien defend le droit. (*Fr.*) God defends the right.

Dien et son acte. The visitation of God; an act of God; an inevitable accident. See *Actus Dei...* *Vis major.*

Dies amoris. A day of kindness; appearance day. It was the day given by the favour and indulgence of the Court to the defendant for his appearance.

Dies cedit. The day advances or begins. *Dies venit,* the day has come. These expressions in Roman Law signify the vesting or fixing of an interest and the interest becoming a present one.

Dies communes. Common days.

Dies consilii. Counsel day; a speedy day appointed to argue a demurrer. See *Consilium.*

Dies datus. The day given; the day of respite given to a tenant or defendant, by the Court.

Dies datus prece patium. A day given at the request of the parties.

Dies depositionis. The day of one's death.

Dies dominicus non est juridicus. A dominical day, *i. e.*, Sunday, is not a juridical day or a Court day. Sunday is not a day for judicial or legal proceedings.

It has been remarked by an eminent Judge that full effect should be given to laws passed for the purpose of preserving the sanctity of the day of rest (*Per Willes, J., Copley v. Burton*, L. R. 5 C. P. 489; 39 L. J. M. C. 141). Judges cannot sit on

a Sunday, that day being exempt from all legal business by the common law (*Per Patteson, J.*, 3 D. & L. 330; *per Erle, C. J.*, *Mumford v. Hitchcocks*, 14 O. B. N. S. 369); nor is the execution of any civil process nor the performance of any work, save of necessity, or charity, lawful. An exception however to the rule is that bail may take their principal, so also the defendant may be retaken after an escape, if it be negligent or without the consent or knowledge of the Sheriff or other officer. Arrest, also, in criminal cases, as for treason, felony, or breach of the peace, and all proceedings and acts necessary for the immediate protection and safety of the State may be considered exceptions; and they are most of them so made by statute.

The Lord's Day Act, 29 Car. 2, c. 7, s. 1, enacts that no tradesman, artificer, workman, labourer, or other person whatsoever shall do or exercise any worldly labour, business, or work of his ordinary calling on Sundays (works of necessity and charity only excepted), and that every person of the age of fourteen years offending in the premises shall forfeit 5 s. A horse-dealer, for instance, cannot maintain an action upon a contract for the sale of a horse made by him upon a Sunday (*Fennell v. Ridler*, 5 B. & C. 406; 29 R. R. 278), though if the contract be not completed on the Sunday, it will not be affected by the statute (*Blossome v. Williams*, 3 B. & C. 232; 27 R. R. 337). But it has been decided that a barber, who shaves his customers on a Sunday thereby commits no offence against the Lord's Day Act (*Palmer v. Snow*, 1900, 1 Q. B. 725).

In India, the maxim applies only to the sittings of the Courts and other offices, and not to other matters, such as contracts, &c.

A judgement debtor may be arrested in execution of a decree at any hour and on any day (*Civ. Pro. Code XIV of 1882, s. 336*).

Arrest under civil process of a mofussil Court on Sunday is legal in this country. Service of process on a Sunday was made illegal in England by an express enactment and there is no similar enactment in force within mofussil (*Pro.*, 30th July, 1869, 4 Mad. H. C. R., Ap., 62).

The reception of a plaint for arrears of rent by the Collector on Good Friday, although by the circular order of the Board of Revenue such day is an authorized holiday, is not illegal (*Govind Koomar Chowdhury v. Hargopal Nag*, 3 B. L. R., Ap., 72).

The accused being arrested on a Sunday, held, that assuming that the Lord's Day Act (29 Car. 2, c. 7) was, in 1863, a part of the law administered in the High Court at Fort William in its Original Civil Jurisdiction, it does not therefore extend to criminal cases in British Burmah (*D. Abraham v. The Queen*, 1 B. L. R., Ap. Cr., 17).

A Mehomedan debtor was arrested within the original jurisdiction of the High Court on a Sunday. Upon application

made, Innes, J., directed his discharge, on the ground that the arrest, having been made upon a Sunday, was illegal. Upon appeal, held, by Holloway, J., that the provisions of the Lord's Day Act (29 Car. II., c. 7) do not apply in this country. That even if the substantive provisions of the Statute were applicable, it did not follow that s. 6 would be. That, if the Statute dealt with substantive law, it would be applicable to all the Queen's subjects or none, and that there were ample reasons for saying it was impossible to apply it to all. By Kernan, J., that as between natives of India, the Lord's Day Act does not apply (*Param Sookh Dass v. Rasheed Ood Dowlah*, 7 Mad. H. C. R. 285).

Criminal proceedings taken by a Magistrate are not necessarily illegal by reason of having been taken on a Sunday (*In re Petition of E. D. Sinclair*, 6 N.-W. P. 177).

When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business-day (*Negotiable Instr. Act XXVI of 1881, s. 25*).

Dies fasti, nefasti, et interdicti. Days of business (*i. e.*, Court days), holidays, and half-holidays.

Dies gratia. Day of grace.

Dies in banco. Days of sitting in the Court of King's Bench. Days of appearance in the Court of Common Pleas.

Dies inceptus pro completo habetur. A day begun is held as complete. See *Fractionem diei...*

Dies incertus pro conditione habetur. An uncertain day is held as a condition.

Dies juridicus. A Court day, as opposed to Sundays and other holidays, upon which the Courts do not sit.

Dies non juridicus. Not a Court day.

Dies pacis Dei et ecclesie. Day of the peace of God and church. A day of vacation. See *Pax Dei...*

Dies pacis regis. Day of the king's peace. A day of the term, as distinguished from a vacation. See *Pax regis*.

Dies specialis. Special day.

Dies venit. The day has come, *i. e.*, the day on which a thing is to be paid. See *Dies cedit*.

Dies votorum. The wedding-day.

Dieta rationabilis. A reasonable day's journey or work.

Dieu et mon droit. God and my right. The motto of the Royal Arms, first assumed by Richard I., indicating that the king holds his dominions of none but God.

Diffacere. To destroy.

Difficile est ut unus homo vicem duorum sustineat. It is difficult that one man should sustain the place of two.

Difforceare rectum. To take away or deny justice.

Digamia. Digamy; deuterogamy; second marriage; a marriage to a second wife after the death of the first; as *bigamy* in law is having two wives at once.

Dignitarii. Dignitaries.

Dignitas. Dignity; honour and authority; reputation.

Dignitas ecclesiasticalis. Ecclesiastical dignity.

Dilationes in lege sunt odiosæ. Delays in law are odious or hateful. A dilatory plea cannot be received unless the matter be supported by an affidavit.

Diligentia. Diligence; ordinary diligence. *Exactissima diligentia*, extraordinary or greatest diligence. *Levissima diligentia*, slight diligence.

Diligitus. Outlawed, *i. e.*, *de lege ejectus*.

Dimidiatio. A halving; a dividing into halves. *Dimidietas*, the moiety or half of a thing.

Diminutio. Diminution; where the plaintiff or defendant, on an appeal to a superior Court, alleges that part of the record is omitted, and remains in the inferior court not certified: whereupon he prays that it may be certified by *certiorari*.

Dimisi, concessi, et ad firman tradidi. Demise, grant, and let to farm. The usual words of operation in a lease.

Disadvocare. To deny or not acknowledge a thing.

Disboscatio. A turning wood ground into arable or pasture.

Discontinuuare nihil aliud significat quam interrompere, desuascere, interrumpere. To discontinue signifies nothing else than to interrupt, to abate, to interrupt.

Discretio est scire (or discerneri) per legem quid sit justum. Discretion is to know through the law what is just. Discretion, when applied to a Court of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful, but legal and regular (*Per Lord Mansfield, R. v. Wilkes*, 2 Burr. 25; *Ind. Specific Relief Act I of 1877*, s. 22).

When an Act directs the Judge or Magistrate to proceed in the exercise of his *discretion*, it does not mean that he is to act according to his own sweet will and pleasure, or caprice or mere fancy or private opinion, but according to the rules of reason, and law and justice (*Rooke's Case*, 5 Rep. 99).

A loose and unfettered discretion is likely to be the refuge of vagueness in decision, and the harbour of half formed thought (*Per Lord Penzance, Morgan v. Morgan*, L. R. 1 P. & D. 644).

Disparata non debent jungi. Opposed things ought not to be joined.

Dispensatio. A dispensation; an exemption from some laws; a permission to do something forbidden or to omit something commanded; a license.

Dispensatio est mali prohibiti provida relaxatio, utilitate seu necessitate pensata; et est de jure domino regi concessa, propter impossibilitatem providendi de omnibus particularibus. A dispensation is the provident relaxation of a mischief prohibited by law, weighed from utility or necessity; and it is conceded by law to the king on account of the impossibility of foreknowledge concerning all particulars.

Dispensatio est vulnus, quod vulnerat jus commune. A dispensation is a wound, which wounds common law.

Dispersonare. To scandalize or disparage.

Disrationare. To disprove; to justify; to clear one-self of a fault.

Disseisin. The ouster of a person from his seisin or possession.

Disseisinam satis facit, qui uti non permittit possessorem, vel minus commode, licet omnino non expellat. He makes disseisin enough who does not permit the possessor to enjoy, or makes his enjoyment less beneficial, although he does not expel him altogether.

Dissimilium dissimilis est ratio. Of dissimilars the rule is dissimilar. Compare *Argumentum a simile... Contrariorum... See Similitudo legis...*

Distinguenda sunt tempora. Times are to be distinguished.

Distingue tempora, et concordabis leges. Distinguish times, and you will make laws agree.

Districtio. A distress; a distraint.

Districione Scaccarii. A distress in the Exchequer for the king's debt; St. 51 Hen. 3, st. 5.

Distringas. That you distrain. A writ addressed to the sheriff, and issued to effect various purposes. Anciently called *constringas*.

Distringas ad infinitum. That you distrain without bounds.

Distringas in detinue. A writ after judgment for the plaintiff in an action of *detinue* to compel the defendant to give up the goods detained.

Distringas juratorum corpora. That you distrain the bodies of the jurors. An old writ against jurors who did not appear in court.

Distringas nuper vicecomitem. That you distrain the late sheriff. A writ issued when the sheriff, after having levied execution, and before selling the goods so levied, goes out of office. It is directed to his successor commanding him to distrain the late sheriff to compel him to sell the goods.

Distringas tenere curiam. That you distrain to hold the Court.

Diversité des courtes. Difference of the courts.

Divide et impera. Divide and govern. This is the policy of almost all governments. By dividing a nation into parties, and pitting them against each other, the people are deprived of their intrinsic weight, and their rulers incline the scale as suits their caprice or discretion.

Divide et impera cum radix et vertex imperii in obedientium consensu rata sunt. Divide and govern, since the foundation and crown of empire are established in the consent of the obedient.

Dividenda. An indenture; one part of an indenture.

Divinatio non interpretatio. Conjecture is not an interpretation or construction.

Divinatio, non interpretatio est, quæ omnino recedit a literâ. It is guessing, not interpretation, which altogether differs from the letter.

Divisa. A division of goods by last will and testament. Hence the word *devise*. It also means an award or decree; also the bounds or limits of division of a parish or farm, &c., as *divisas perambulare*, to walk the bounds of a parish.

Divisibilis in semper divisibilis. A thing divisible may be for ever divided.

Divortium. A separation; a divorce.

Divortium dicitur à divertendo, quia vir divertitur ab uxore. Divorce is called from *divertendo*, because a man is diverted from his wife.

Dixit quod non voluit. He has said what he did not mean.

Do. I give.

Doli capax. Capable of guile or mischief or crime. Under the English law, above fourteen, a child is presumed to be *doli capax* but between seven and fourteen (under the Ind. P. C., twelve), a child is presumed to be *doli incapax*, though the rule prevails that *malitia supplet ætatem*. Under seven a child cannot be guilty of felony. See *In omnibus penalibus*...

Doli incapax. Incapable of mischief or crime.

Dolo facit qui petit quod redditurus est. It is fraudulent to claim what you must restore.

Dolo malo pactum se non servaturum. An agreement arising out of fraud is not to be observed or fulfilled.

Dolo proxima. Bordering on fraud.

Dolosus versatur in generalibus. A deceiver deals in generalities. He who wishes to deceive uses general or ambiguous terms. A fraudulent plaintiff or defendant deals in broad and general phrases, *i. e.*, avoids making accurate allegations, while he studies and often achieves a general correctness of statement.

The leading case on the subject of fraud is *Twyne's Case* (3 Rep. 80). The facts were that A owed B £400, and also owed C £200; C brought on action of debt against A, and pending the writ, A, being possessed of chattels of the value of £800, in secret made a general deed of gift of all his chattels, real and personal, to B, in satisfaction of his debt, but nevertheless remained in possession of the chattels some of which he sold; he also shorn the sheep, and marked them with his own mark. Afterwards C obtained judgment, and

issued a *fi. fa.* against A, and the question arose, whether the gift was fraudulent and of no effect by virtue of 13 Eliz. c 5. It was determined, for the following reasons, that the gift was fraudulent within the statute:—(1) it had the signs and marks of fraud, because it was general, without excepting the wearing apparel or other necessities of the donor; and it is commonly said that *dolosus versatur in generalibus*, a person intending to deceive deals in general terms (*Mace v. Cammel*, Loft, 782; *Auchterarder Presbytery v. Earl of Kinnoull*, 6 Cl. and F. 698; *Spicot's Case*, 5 Rep. 58); (2) the donor continued in possession and used the goods as his own, and by reason thereof traded with others and defrauded them; (3) the gift was made in secret, and *dona clandestina sunt semper suspiciosa*, clandestine gifts are often open to suspicion (*Latimer v. Batson*, 4 B. & C. 652; per Lord Ellenborough, *Leonard v. Baker*, 1 M. & S. 253); (4) it was made pending the writ; (5) there was a trust between the parties, for the donor possessed the goods and used them as his own, and fraud is always clad with a trust, and a trust is the cover of fraud; and (6) the deed stated that the gift was made honestly, truly, and *bona fide*, and *clausula inconsueta semper inducunt suspicionem*, unusual clauses excite suspicion.

Dolus. In Roman Law, this means fraud or wilfulness or intentionality. In that sense it is opposed to *culpa*, which is negligence merely, in greater or less degree. But *extrema culpa* is sometimes treated as *dolus*. See *Culpa lata*...

Dolus auctoris non nocet successori. The fraud of a predecessor prejudices not his successor.

Dolus bonus. An honest device or artifice. An artifice which the law considers honestly employed for some justifiable purpose.

Dolus circuita non purgatur. Fraud is not purged by circuitry. Fraud is not cured by being wrapped about with intricacy. In transactions originally founded in fraud or covin, the law will look to the corrupt beginning, and consider it as one entire act, according to this principle; but this principle must be taken with a qualification where the term *dolus* is used to signify *deceit*. In actions of deceit some connection must be shown between the party deceiving and the party deceived, as that the deception was practised by the defendant upon the plaintiff or upon a third person, with the knowledge or intent that it would or should be acted upon by the plaintiff.

See *Fraus est celare*...

Dolus dans locum contractui. Fraud in the place of the contract, *i. e.*, fraudulent misrepresentation by which one induces another to enter into a contract. This is a ground for avoiding the contract.

Dolus malus. A dishonest device or artifice; a fraud: It includes every kind of craft, guile, or machination intentionally employ-

ed for the purpose of deception, cheating or circumvention.

Domicellus. A name anciently given to the king's natural sons in France.

Domicilium originis. Domicile of origin; place of birth. A domicile which is voluntarily acquired by a party is termed *proprio Marte*.

Domicilium, re et facto transfertur, non nudâ contestatione. Change of domicile is proved by facts and actions, not by a simple declaration.

Domina. A title given to honourable women, who anciently in their own right of inheritance held a barony.

Dominicum. A demesne; those lands which a lord of the manor keeps in his own hands, as opposed to those which are let out to tenants.

Dominium. In Roman Law, this signifies ownership of a thing as opposed to a mere possessory right; also a right against a person, such as a covenantee has against a covenantor.

Dominium a possessione capisse dicitur. Right is said to have its beginning in possession.

Dominium directum. The direct or absolute dominion; seignory or lordship of lands held in tenure; also distinguished from *dominium utile*. See *Absolutum et...*

Dominium eminens. Eminent domain. The right which every state or sovereign power has to use the property of its citizens for the common welfare. This right is the true foundation of the right of taxation. See *Jus eminens. Salus populi...*

Dominium non potest esse in pendentî. Lordship cannot be in suspense.

Dominium utile. The useful dominion. The possessory or vassal's title to the soil, or the right to its use and profits; the beneficial right granted to the vassal; as distinguished from *dominium directum*.

Dominus. A title signifying a knight, a clergyman, a lord of the manor, a gentleman, or a ruler. Feminine, *Domina*.

Dominus aliquando non potest alienare. A lord sometimes is incapable of alienating.

Dominus capitalis loco heredis habetur, quoties per defectum vel delictum, extinguitur sanguis sui tenentis. The chief lord of a fee takes the place of the heir whenever the blood of the tenant becomes extinct, either through deficiency or crime.

Dominus iusticiarius communium placitorum. Chief Justice of the Common Pleas.

Dominus litis. The controller of a suit or litigation. An advocate who, after the death of his client, prosecuted a suit to sentence for the executor's use.

Dominus navis. The absolute owner of a ship.

Dominus non maritabit pupillum nisi semel. A lord cannot give a ward in marriage but once.

Dominus rex nullum habere potest parem multo

minus superiorem. The king cannot have an equal, much less a superior.

Domitæ natura animalia. Animals of a tame and domestic nature, as horses, kine, sheep, poultry, &c.

Domo reparandâ. For repairing a house. An ancient writ that lay for a man against his neighbour, by the fall of whose house he anticipated damage to his own. The writ directed the neighbour to put his house in a proper state of repair.

Domus Computus Hospitii Regis. Counting house of the king's house-hold. Usually called the *Board of Green Cloth*, where sit the lord steward, the treasurer of the king's house, and other officers for daily taking the accounts of the king's house-hold expenses.

Domus conversorum. A house built by Henry III for Jews converted to the Christian faith. But King Edward III who expelled the Jews from his kingdom made the house a place for the custody of rolls and records of the Chancery and now the Master of the Rolls sits there as judge.

Domus Dei. The house of God; applied to hospitals and religious houses.

Domus mansionalis Dei. The mansion house of God.

Domus Procerum. The House of Lords. Abbrev. *Dom. Proc.* or *D. P.*

Domus sua cuique est tutissimum refugium. To every one his own house is the safest refuge. Every man's house is his castle.

The leading case under this maxim is *Seymour's Case* (5 Rep. 91; 1 Smith. L. C. 86) in which the following five points were resolved:—

1. The house of every man is to him his castle and fortress as well for his defence against injury and violence as for his repose. Wherefore, although the life of man is a thing precious in law, yet if thieves came to a man's house to rob or murder him, and he or his servants kill any of the thieves in defence of himself and his house, this is not felony. See ss. 100 and 103 of the Ind. P. C. XLV. of 1860.

2. Where any house is recovered by any real action, the sheriff may break the house and deliver the possession of it to the plaintiff; for, after judgement it is not the house of the defendant. It is the duty of the sheriff, before he delivers possession, to remove from the house all persons and goods within it (*Upton v. Wells*, 1 Leon. 145; *Civ. Pro. Code XIV. of 1882*, s. 818).

3. In all cases where the king is a party (as where a felony or misdemeanour is committed), the sheriff, if the doors be not open, may break the party's house either to arrest him or to do other execution of the king's process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and make request to open the doors. See *Crim. Pro. Code V of 1898*, s. 48.

4. In all cases where the door is open, the sheriff may enter the house and do execution at the suit of any subject, either of the body or of the goods. But it is not lawful for the sheriff, on request made and denial, to break the defendant's house to execute any process at the suit of any subject. The Code of Civil Procedure XIV of 1882, ss. 271 and 336, provide that for the purpose of making an arrest or seizing any property no dwelling-house shall be entered after sunset and before sunrise; and no outer door of a dwelling-house, shall be broken open. But when the officer authorized to make the arrest or seize the property has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor or property is to be found. This rule however is strictly confined to a man's dwelling-house; and barns and other buildings, not parcel of, or connected with, his dwelling-house, may be broken open to levy an execution (*Penton v. Browne*, 1 Sid. 186; *Hodder v. Williams*, 1895, 2 Q. B. 663; 65 L.J.Q.B. 70). A bailiff or nazir has authority to break open the door of a shop in order to execute a writ of attachment (*Damodar Parsotam v. Ishwar Jettha*, 3 Bom. 89), or to remove locks put by the judgment-debtor on the doors of godowns or other places where his property is stored, and put his own locks thereon, for the purpose of attachment and safe custody of the property (*Sodamini Dasi v. Jageswar Sur*, 5 B. L. R., Ap., 27; 15 W. R. 339). A person executing a process directing a general attachment of moveable property having gained access to a house has a right to remove the lock from the door of a room in which he has reasonable ground for believing moveable property to be lodged (*Kondasawmy Pillay v. Kristnasawmy Pillay*, 5 Mad. H. C. R. 189). But if a defendant escape from arrest, the sheriff may, after demand of admission and refusal, break open either his own house or that of a stranger for the purpose of retaking him (*Anon.*, 6 Mad. 105; Lofft, 390; *Lloyd v. Sandilands* 8 Taunt. 250; 9 R. R. 507).

5. The house of any one is not a castle but for himself; so that the protection it affords cannot be extended to any third person who flies to the house for shelter or to another man's goods which may be brought and conveyed into the house for the purpose of preventing any lawful execution, or for evading the ordinary process of law: for the privilege of his house extends only to him and to his family and to his own proper goods, or to those which are lawfully and without fraud and covin there; and, therefore, in such cases, after denial on request made the sheriff may break the house. It must be observed, however, that the sheriff, whether he breaks the stranger's house, or merely enters it by an open door, does so at his peril; and if the defendant or his goods be not in the house, the sheriff is a trespasser

(*Cooke v. Birt*, 5 Taunt. 765; 15 R. R. 652; *Johnson v. Leigh*, 6 Taunt. 246; 16 R. R. 614; *Morrish v. Murrey*, 13 M. & W. 52). He may enter the defendant's own house to ascertain whether the defendant or his goods be there (*Ratcliffe v. Burton*, 3 B. & P. 223; 6 R. R. 771), at any rate if he had reasonable grounds for believing that such is the case (*Morrish v. Murrey*, *supra*); but if he enter the house of a stranger with the like object, he can be justified only by the event (*Cooke v. Birt*, &c., *supra*).

A Nazir or Sheriff cannot under a writ of attachment, break open a defendant's dwelling-house to execute civil process against his person or goods if the outer door is closed and locked, even when he finds that the defendant has absconded to evade such execution. The privilege extends to a man's dwelling-house or out-house or any office annexed to the dwelling-house, but not to a building standing at a distance from the dwelling-house, and not forming parcel of it. If, however, the outer door of the defendant's dwelling-house be open, and the Sheriff or Nazir enter, he may afterwards break an inner door to take the goods (*Bai Kuwar v. Venidas Gangaram*, 8 Bom. H. C., A. C., 127).

A Sheriff's officer and his assistant went to the house of the prosecutor for the purpose of arresting him under a writ of *Ca. ad. re.*, and on their arrival, finding the outer door open, entered, but before they could make an actual arrest of the prosecutor, they were expelled from the house, the outer door being immediately closed and fastened. The officer, calling in the aid of the police, had the outer door broken open, and arrested the prosecutor under the writ. *Held*, that although the prosecutor had not been arrested before the officer and those acting in his aid were expelled from the house, they were entitled to break open the outer door for the purpose of re-entering and arresting him without making any express demand for leave to re-enter. The defendants having once been lawfully in the house, and the prosecutor knowing that they were lawfully about to arrest him, having unlawfully caused them to be expelled for the purpose of preventing them from so doing, could not be allowed to take advantage of his own wrong by thus defeating the process of the law; and they had a right to place themselves into the position which they had occupied when his unlawful act began. The outer door being open, they were entitled to enter the house under civil process, and, being lawfully in the house to arrest the prosecutor, he was guilty of a trespass by expelling them, and his act of then locking the outer door was unlawful, and he could confer no privilege upon himself by that unlawful act (*Aga Kurboolie Mahomed v. The Queen*, 3 Moo. I. A. 164).

Dona clandestina sunt semper suspiciosa. Clandestine gifts are always suspicious. See *Dolus versatur...*

Donare videtur quod nullo jure agente conceditur. That may be considered as a gift which is bestowed without any legal compulsion, or otherwise than by virtue of a right.

Donatio. A donation; gift.

Donatio feudii. The donation of a fee.

Donatio mortis causâ. A donation or gift made in prospect of death. Such a gift has these essentials:—(1) It must be made by the giver, when ill, in anticipation of death; (2) It must be intended to take effect only upon his death by his existing illness; for his recovery from that illness, or his subsequent personal revocation of the gift, as by resuming its possession, will defeat it; (3) A delivery either actual or symbolical of the subject of the gift, or of the instrument which represents it, must be made to the donee either for his own use or upon trust for another person. See the Indian Succession Act X of 1865, s. 178.

Donationes sunt stricte juris, ne quis plus donasse præsumitur quam in donatione expresserit. Donations or gifts are to be construed strictly that no one be presumed to have bestowed more than is expressed in the donation. But see *Verba chartarum...*

Donatio non mortis causâ. A donation not made in prospect of death.

Donatio non præsumitur. A gift is not presumed.

Donationum alia perfecta, alia incepta et non perfecta; ut si donatio lecta fuit et concessa, ac traditio nondum fuerit subsequuta. Some gifts are perfect, others incipient or not perfect; as if a gift were read and agreed to, but delivery had not then followed.

Donatio perficitur possessione accipientis. A gift is perfected by possession of the receiver.

To constitute a valid gift under the Hindu or the Mehomedan Law there must be either possession or the receipt of rent by the donee. Registration of the deed of gift gives the donee neither actual, constructive, nor symbolical possession, and, therefore, cannot be regarded as equivalent to delivery and acceptance (*Bank of Hindustan v. Premchand Raichand*, 5 Bom. H. C., O. C., 88; *Hurjivan Anandram v. Narayan Haribhai*, 4 Bom. H. C., A. C., 31; *Venkatachella v. Thathammal*, 4 Mad. H. C. R. 460; *Wannathan v. Keyakadatte*, 6 Mad. H. C. R. 194; *Vasudev Bhat v. Narayan*, 7 Bom. 181; *Mogulsha v. Mohamad Saheb*, 11 Bom. 517; *Meherali v. Tajuddin*, 13 Bom. 156; *Ismal v. Ramji*, 1 Bom. L. R. 177; *Dagai Dabee v. Mathura Nath*, 9 Cal. 854; 12 C. L. R. 530; *Lakshminimoni Dasi v. Nityamanda Day*, 20 Cal. 464).

But in places where the Transfer of Property Act IV of 1882 is in force, the above rule as to the delivery of possession has been abrogated by ss. 123 and 129 of the Act.

Assuming that delivery of possession was essential under the Hindu Law to complete a gift of immoveable property, that law has been abrogated by s. 123 of the Transfer of Property Act. The first para. of that section means that a gift of immoveable property can be effected by the execution of a registered instrument only, nothing more being necessary. *Semble*.—The same is the case under that section with regard to moveable property, provided that a registered deed (and not the alternative mode of delivery) be adopted as the mode of transfer (*Dharmadas Dus v. Nistarini Dasi*, 14 Cal. 446).

The Hindu rule of law that delivery of possession is essential to complete a gift has been abrogated by ss. 123 and 129 of the Transfer of Property Act (*Bai Rambai v. Bai Mani*, P. J., 1898, p. 147).

The same ruling will apply to gifts under the Mehomedan Law.

Donatio principis intelligitur sine præjudicio tertii. A gift of the prince is understood without prejudice to a third party. See *Non potest Rev...*

Donatio propter nuptias. Property contributed by the husband in respect of the marriage, as opposed to *Dos*.

Donatio stricta et coarctata; sicut certis hæredibus quibusdam a successione exclusis. A donation is exact and straitened; as to certain heirs, some being excluded from the succession.

Donator nunquam desinit possidere antequam donatarius incipiat possidere. He who gives never ceases to possess before that the receiver begins to possess.

Donec probetur in contrarium. Until the contrary be proved.

Donis, de. See *De donis*.

Donum gratuitum. A mere gratuitous gift.

Dormiunt aliquando leges, nunquam moriuntur. The laws sometimes sleep, never die.

Dos. Dowry. Property contributed by the wife or her relations upon or in respect of the marriage, as opposed to *Donatio propter nuptias*, of the husband.

Dos de dote peti non debet. Dower from dower ought not to be sought.

Dos mulieris. Dowry; that which the wife brings her husband in marriage.

Dos rationabilis. A reasonable dower.

Dos rationabilis vel legitima est cuiuslibet mulieris de quocunque tenemento tertia pars omnium terrarum et tenementorum, quæ eis suis terminis in dominio suo ut de feodo, etc. Reasonable or legitimate dower belongs to every woman of a third part of all the lands and tenements of which her husband was seised in his demesne, as of fee, etc.

Dotarium. Dower; the portion which a widow has of the lands of her husband at his decease, for the sustenance of herself, and the education of her children.

Dote, or Recto de dote. A writ of right of dower, which lay for a widow who had received part of her dower, but was deprived of the residue, lying in the same town, by the wrong of the same tenant.

Dote assignandâ. A writ that lay for the widow of a tenant who held of the king *in capite* (that is, without the intervention of any mesne lord), for the assignment of her dower. In order to obtain this writ she had to make oath that she would not marry without the king's leave.

Dote unde nihil habet (or more fully, *Recto de dote unde nihil habet*). A dower where of she has nothing. A writ which lay for a widow to whom no dower has been assigned, as against the tenant of lands whereof he was seized and of which she was dowable.

Doti lex favet; præmium pudoris est, ideo parcatur. The law favours dower; it is the reward of chastity, therefore it is to be preserved. See *In dubio prodote...*

Dotis admeasurementis, or Dotis administratio. An old writ for admeasurement of dower against a widow who held more lands than her proper share.

Do, ut des. I give, that you may give; as when I give money or goods on a contract that I shall be repaid money or goods for them again. A sort of "valuable consideration" among the Roman lawyers.

Do, ut facias. I give, that you may do or perform; as when I agree with a servant to give him wages for work done by him.

Droit. (Fr.) A right; justice; equity. For titles beginning with *droit*, see *Recto...*

Droit administratif. Administrative law.

Droit coutumier. Common law.

Droit de aubaine. (Fr.) The king's right of escheat of an alien's property. See *Albinatus jus*.

Droit de entree. Right of entry.

Droit-droit. Droit-droit. A two-fold or double right (*ius duplicatum*) i. e., the right of possession joined with the right of property, which makes a complete title to lands, tenements and hereditaments. And when to this double right the actual possession is also united then, and then only, is the title to property completely legal.

Droit ne done plus que soit demandé. Justice gives no more than is demanded. See *Judices est judicare...*

Droit ne poit pas mourir. A right never can die.

Droit patent. A right patent.

Droits civils. Private rights.

Droits d'auteur. Copy rights of authors.

Droits de gens. The law of nations.

Droits de seigneur. Lordly rights; rights of the nobles.

Droits généraux. Government taxes.

Duas uxores eodem tempore habere non licet. It is not lawful to have two

wives at a time. In Christian countries bigamy or polygamy is universally prohibited. In India bigamy is an offence punishable under s. 494 of the Indian Penal Code XLV of 1860, unless where a second marriage is permitted by the personal law of the party. Where a second marriage during the life time of the first wife is permitted, a Hindu may have a plurality of wives without limit. Under the Mehomadan law, a free man can have four wives at a time, and a slave, two. A Mehomedan, having four lawful wives alive and undivorced, commits bigamy when he marries a fifth (*Mac, Meh. Law, 2nd Edn p. 260*).

Dubitante. Doubting; a word used in legal reports to signify that a judge cannot make up his mind as to the decision he should give.

Duces. Dukes; leaders.

Duces tecum. You shall bring with you. A writ commanding a person to produce in court a document which may be in his possession.

Duces tecum licet languidus. You shall bring with you, although sick. A writ formerly directed to a sheriff upon a return, i. e., upon his having made a statement endorsed on a previous writ that he cannot bring his prisoner without danger of death, he being *adco languidus* (so much feeble or powerless), commanding him to bring him nevertheless. Now abolished; where the person's life would be endangered by removal, the law will not now admit it to be done.

Duellum. A duel. Anciently a fight between two persons in a doubtful case for the trial of the truth; but now a fight upon some quarrel precedent.

Dum bene se gesserit. As long as he conducted himself well. During good behaviour. Applied to an office or appointment which may be held by a person so long as he behaves himself well. See *Ad vitam... Quamdiu bene...*

Dum casta vixerit. So long as she shall live chaste. In deeds of separation of husband and wife, the husband often makes an allowance to the wife to continue only so long as she shall live a chaste life. This provision is called the *dum casta* clause.

Dum fuit infra etatem. While he was under age. A writ that lay for him who, having before he came of full age, made a conveyance of his lands, desired to recover them again from him to whom he conveyed them. The writ also lay for the heir of the infant alienor.

Dum fuit in prisonâ. While he was in prison. A writ for enabling a man to recover lands which he had conveyed away under duress of imprisonment. Now abolished.

Dum fuit non compos mentis. While he was of unsound mind. A writ that lay for a man who had alienated or conveyed away his lands while in an unsound state of mind. Now abolished.

Dum recens fuerit maleficium. While the mischief was fresh. Applied to a complaint made while the mischief is fresh.

Dum sola. While single, or unmarried. An expression used to indicate the period of a woman being unmarried or a widow, and therefore not labouring under the disabilities of coverture.

Dum sola et casta. While single and chaste.

Dum tamen. Until however; nevertheless.

Duodena. A jury of twelve men.

Duodena manu, or Duodecima manu. Twelve persons or witnesses who defended a criminal on oath, in the proceeding called *wager of law*. See *Vadiatio legis*.

Duo non possunt in solido unam rem possidere. Two persons cannot possess one thing in entirety.

Duo sunt instrumenta ad omnes res aut confirmandas aut impugnandas—ratio et auctoritas. There are two instruments either to confirm or to impugn all things—reason and authority.

Duplex placitum. Double plea; as where a defendant alleges for himself two several matters in bar of the plaintiff's action, when one of them is sufficient.

Duplex querela. A double plaint or quarrel. A complaint in the nature of an appeal available to a clergyman who, having been presented to a living, is refused institution by the ordinary. It lies from the ordinary to his next immediate superior.

Duplicatio. In Roman Law, this means pleading or rejoinder.

Duplicationem possibilitatis lex non patitur. The law does not allow a duplication of possibility, *i. e.*, a possibility upon a possibility, a remote possibility.

Durante. During.

Durante absentia. During absence.

Durante bene placito. During our good pleasure. Applied to an office or appointment which may be held by a person during the pleasure of the appointer or the Sovereign. Compare *Dum bene...*

Durante lite. During the continuance of a suit. See *Pendente lite*.

Durante minore etate. Durante minoritate. During lesser age; during minority.

Durante regno. During the reign.

Durante viduitate. During widowhood. Words used with reference to an estate granted to a widow until she marries again.

Durante vita. During life.

Duress per minas. Compulsion by threats.

Durities. Duress.

E

Eadem causa diversis rationibus coram iudicibus ecclesiasticis et secularibus ventilatur. The same cause is argued upon different principles before ecclesiastical and secular judges.

Eadem mens præsumitur regis quæ est juris, et quæ esse debet, præsertim in dubiis. The mind of the Sovereign is presumed to be coincident with that of the law, and with that which it ought to be, especially in dubious or ambiguous matters. See *Rex non potest peccare*.

The King is incapable not only of doing wrong, but even of thinking wrong. Whenever, therefore, it happens that by misfortune or inadvertence, the Crown has been induced to invade the private rights of a subject as by granting a franchise to a subject contrary to reason, or in a way prejudicial to the common wealth or a private person—the law will not suppose that the king meant either an unwise or an injurious action, but declares that the king was deceived in his grant, and therefore such grant becomes void upon the supposition of deception either by or upon those agents whom the Crown has thought proper to employ.

Ea est accipiendi interpretatio quæ vitio caret. That interpretation is to be received which is free from fault.

Ea quæ commendandi causâ in venditionibus dicuntur si pulam appereant venditorem non obligant. The vendor will not be liable for mere praise of his merchandise, if the defects be apparent at the time of the bargain. The maxim *caveat emptor* will, therefore, apply in cases where the seller affirms that the subject matter of the sale has not a defect, which is a visible defect and obvious to the senses. In the absence of an express agreement to the contrary, a general warranty does not usually extend to defects apparent on simple inspection, requiring no skill to discover them, nor to defects known to the buyer. However, if without such knowledge on the part of the buyer, a horse is warranted sound, which, in reality, wants the sight of an eye, though this might be thought to be the object of one's senses, yet, as the discernment of such a defect is frequently a matter of skill, it has been held, that an action lies to recover damages for the imposition (*Butterfield v. Burroughs*, 1 Salk. 211; *Holliday v. Morgan*, 1 E. & E. 1).

An express warranty will not necessarily result from a simple commendation of the quality of goods by the seller, for *simplex commendatio non obligat*. Such *simplex commendatio* will in most cases be regarded merely as an invitation to custom, since every seller will naturally affirm that his own wares are good, unless it appears that the affirmation at the time of sale was intended to be a warranty or that such must be its necessary meaning. Where the subject of the affirmation is a mere matter of opinion, and the buyer may himself institute inquiries into the truth of the assertion, the affirmation must be considered as a nude assertion and it is the buyer's fault from his own laches that he is deceived. Either party may, therefore, be innocently silent as to grounds open to both to exercise

their judgment upon, and in this case, *aliud est celare, aliud tacere*, silent is not equivalent to concealment (*Carter v. Boehm* 3 Burr. 1910).

From *Attwood v. Small* (6 Cl. & F. 232) the principle is clearly deducible that if a purchaser, choosing to judge for himself, does not effectually avail himself of the knowledge or means of knowledge accessible to him or his agents, he cannot afterwards be permitted to say that he was deceived and misled by the vendor's misrepresentations, for *qui vult decipi, decipiat*.

For contracts in which there is or is not an implied warranty, see ss. 109 to 116 of the Ind. Con. Act IX of 1872.

Ea quæ in curiâ nostrâ ritè acta sunt debitæ executioni demandari debent. Those things which are properly transacted in our Courts, ought to be committed to a due execution.

Ea quæ raro accidunt, non temere in agendis negotiis computantur. Those things which seldom happen are not rashly to be taken into account in transacting business.

Eat consultatio. That the consultation go.

Eat inde sine die. That he go from thence without a day, *i. e.*, be dismissed without any further continuance or adjournment. The words used on the acquittal of a defendant. See *Aller sans...*

Ecclesia. A church; a religious assembly of Christians; a parsonage.

Ecclesia decimas non solvit ecclesiæ. The church pays not tithes to the church. See *De non decimando*.

Ecclesia ecclesia decimas solvere non debet. A church ought not to pay tithes to a church. See *De non decimando*.

Ecclesia guardiani. The guardians or keepers of the church; church-wardens.

Ecclesiæ magis favendum est quam parsonæ. The church is to be more favoured than the parson.

Ecclesia est infra ætatem et in custodiâ domini regis, qui tenetur jura et hæreditates ejusdem manu tenere et defendere. The church is under age, and in the custody of the king, who is bound to uphold and defend its rights and inheritances.

Ecclesia fungitur vice minoris; meliorem conditionem suam facere potest, deteriolem nequaquam. The church enjoys the privilege of a minor; it can make its own condition better, but not worse. The Crown is considered the guardian of the church.

Ecclesia meliorari non deteriorari potest. The church can make its condition better, by no means worse.

Ecclesia non moritur. The church does not die.

Ecdicus. An attorney or proctor of a corporation; the legal agent of a community.

E contra. On the other hand.

E converso. The converse; conversely; contrariwise.

Edictum. A proclamation; an ordinance; an order; a command.

Effectus sequitur causam. The effect follows the cause.

Effusio sanguinis. The fine or penalty imposed by old English laws for the shedding of blood.

Eigné. (Fr.) The eldest; first born. See *Bastard eigné*.

Ei incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit. The burden of proof lies upon him who asserts, not upon him who denies; as, by the nature of things, he who denies a fact cannot produce any proof.

Ei nihil turpe, cui nihil satis. To whom nothing is sufficient, to him nothing base.

Ei qui affirmat, non ei qui negat, incumbit probatio. The burden of proof lies on him who affirms, not on him who denies.

Ejecit infra terminum. He ejected him before the end of his term. See *Quare ejecit...*

Ejecta. A woman ravished or deflowered, or cast forth from the virtuous.

Ejectione custodiæ. Ejectment de garde. (Fr.) A writ which lay against him that cast out the guardian from any land during the minority of the heir. See *Ravishment de...*

Ejectione firmæ. Ejection of a farm. A writ which lay for a lessee for a term of years, that was cast out before his term expired. The action was brought against the wrongdoer, whether he was the lessor of the land or not.

Ejusdem generis. Of the same kind or nature. See *Noscitur a sociis*.

Ejus est interpretari cujus est condere. It is the province of him to construe who has the power to enact. This is a maxim of the Roman Law, and does not hold good under the English Law, for the province of the legislature is not to construe but to enact, and their opinion not expressed in the form of law, as a declaratory provision would be, is not binding on Courts whose duty is to expound the laws they have enacted and not to make laws, *judicis est jus dicere, non dare*. See *Contemporanea expositio...*

Ejus est non velle qui potest velle. He who can say yes can say no.

Ejus est periculum cujus est dominium aut commodum. He who has the dominion or advantage has the risk. See *Qui sentit commodum...*

Ejus nulla culpa est cui parere necesse sit. He is not in any fault who is bound to obey. It is no fault of him who does an act in obedience to existing laws. See *Necessitas inducit...*

Electio est interna libera et spontanea separatio unius rei ab aliâ, sine compulsione, consistens in animo et voluntate. Election is an internal, free, and spontaneous separation of one thing from another, without compulsion, consisting in intention and will.

Electiones fiunt ritè et liberè sine interruptione aliquâ. Let elections be made rightly and freely, without any interruption.

Electio semel facta non patitur regressum. Election once made suffers not a recall; Provided it is made with full knowledge of the circumstances. See *Quod semel placuit...*

Electus non potest elegi. Formerly on the occasion of a bishop being translated from one bishopric to another, he was not elected to the new see, for the rule of the canon law was *electus non potest elegi* (once elected cannot be elected again) on the pretence that he was married to the first church which marriage could not be dissolved but by the Pope.

Eleemosyna. Alms. Possessions belonging to the church.

Eleemosynæ. Possessions belonging to the church.

Eleemosyna Regis. Eleemosyna Aratri or *carucarum.* A penny which King Ethelred ordered to be paid for every plough in England towards the support of the poor.

Elegit. He has chosen. A species or execution, given by the Statute of Westminster II (13 Edw. I, c. 18). Before that Statute a man could only have the profits of lands of a debtor in satisfaction of his judgment, but not the possession of the lands themselves. The statute granted this writ (called an *elegit*, because it is in the choice of a judgment-creditor whether he will sue out this writ, or a *fiat facias*), by which the judgment-debtor's goods and chattels are appraised and delivered to the creditor in satisfaction of his debt. If they should prove insufficient, then one-half of the debtor's lands of freehold tenure was further to be delivered over to the judgment-creditor, to hold until the debt was levied, or the debtor's interest therein had expired. But the writ now extends to all the debtor's lands instead of a moiety as before, and also to the debtor's customary and copyholds, subject to the rights of the lord of the manor. The creditor whilst in the enjoyment of an estate under a writ of *elegit*, is called *tenant by elegit*; and his estate is called an estate held by *elegit*.

Elinguo. To deprive of the tongue; the punishment of cutting out the tongue.

Elisors or *Eliors.* Chosen persons appointed by the Court to choose the jury in cases of challenge to the sheriff or coroners for partiality, &c.

Elongata. A return made by a sheriff in replevin, that cattle, &c., are not to be found or are removed, so that he cannot make deliverance, &c.

Elongatus. Eloigned; withdrawn; carried off. A return made by the sheriff to a writ *de homine replegiando*, which lies to replevy a man out of prison, or out of the custody of any private person (in the same manner as chattels taken in distress may be replevied) upon giving security to the sheriff that he shall be forthcoming to answer any charge

against him. And if the man be conveyed out of the jurisdiction of the sheriff, the latter may return that he is eloigned, *elongatus*; where upon a process issues (called a *capias in withernam*), to imprison the defendant himself, without bail or mainprize, until he produces the party.

Elongavit. He hath eloigned or carried away.

Emancipatio. A solemn act by which a paterfamilias divests himself of his power over his filius familias, so that the filius familias may become *sui juris*.

Emblers de gentz. (*Fr.*) A stealing from the people.

Emendare. To make amends for any crime or trespass. A capital crime, not to be atoned by fine, was said to be *inemendabile*.

Emendatio. The power of amending and correcting abuses, according to stated rules and measure, as *emendatio panis*, the power of looking to the assize of cloth that it be of just measure; *emendatio panis et cervisie*, the assize of bread and beer (sealed rates for the sale of bread and beer), privileges granted to lords of manors and executed by their officers. The correction of an error committed in any proceeding.

Emphyteusis. (*Rom. L.*) A perpetual lease. The right of enjoying all the fruits, and disposing at pleasure, of the property of another, subject to the payment of rent (*pensio* or *canon*) to the owner.

Empiricus. A quack; a physician whose art is founded solely on practice without science or legal qualifications.

Emptio bonorum. In Roman Law the assignment of the estate and effects of an insolvent debtor, whether during his life or after his death, to a trustee for his creditors.

Emptiones vel acquisitiones suas dei cui magis vellet. *Terram autem quam ei parentis dederunt, non mittat extra cognationem suam.* A man may give his purchased or acquired property to whom he pleases. But he cannot transfer, in exclusion of his kindred, the lands which his parents have left him.

Emptiones-venditiones contractæ argumentum. A proof of a purchase and sale being contracted.

Emptio venditio. A contract of sale in Roman Law.

Emptor. A buyer.

Emptor emit quam minimo potest, venditor vendit quam maximo potest. A purchaser buys for the least he can, a vendor sells for the most he can. The value of all things contracted for is measured by the appetite of the contractors, and therefore the just value is that which they be content to give.

Emuliere. See *Mulieratus*.

En auter (or *autre*) *droit.* In right of another: as for instance, an executor holds property and brings actions in the right of those entitled to his testator's estate.

Enditor. To indict.

En eschange il covient que les estates soient egales. In exchange it is desirable that the estates be equal.

En especes au cours de ce joir. In coin of the present currency.

Enitia pars dignitas primogeniti. The prerogative given to the eldest coparcener, where an estate is descended to daughters for want of male heir, to choose first, after an inheritance is divided.

Enitia pars semper preferenda est propter privilegium ætatis. The part of the elder sister is always to be preferred on account of the privilege of age.

Enlarge l'estate. (Fr.) To enlarge the estate. A species of release which enures by way of enlarging an estate, *i. e.*, increasing his interest in the land; as for example, where there is an estate in A for life, with remainder to B and his heirs, and B releases his estate to A, A's estate is said to be enlarged into a fee simple.

Ens. A being or thing.

Eodem legamine quo legatum est dissolvitur. A bond is released by the same formalities with which it is contracted. See *Nihil tam conveniens*...

Eodem modo quo colligatur dissolvi debet. An obligation should be discharged or released in the same way that it is contracted. See *Nihil tam conveniens*...

Eodem modo quo quid constituitur, eodem modo dissolvitur—destruitur. In the same way in which anything is constituted in that way it is dissolved—destroyed. See *Nihil tam conveniens*...

Eo instanti. At that instant. At the same moment.

Eo intuitu. With that view.

Eo legamine, que legatur. By that tie by which he or it is bound.

Eo nomine. In or by that very name; on that account.

Eo nomine et numero. Of that name and amount.

Eos, qui negligenter ignis apud se habuerint, fastibus vel flagellis cadi. That those, who through negligence set a house on fire, be beaten with clubs or sticks.

Eo sunt animadvertenda peccata maxime, quæ difficillime præcaventur. Offences should be most severely punished, which are most difficult to provide against.

Episcopalia. Synodals or other customary payments from the clergy to their bishop or diocesan. Also called *Onera Episcopalia*.

Episcopus. A bishop.

Episcopus alterius mandato quam regis non tenetur obtemperare. A bishop need not obey any mandate save the king's.

Episcopus teneat placitum in curia Christianitatis de iis quæ merè sunt spiritualia. A bishop may hold plea in a court Christian, of things merely spiritual.

Equites aurati. Knights with gilt spurs. *Eques auratus*, a gilded knight; a knight with gilt spurs. Because anciently none but knights might beautify and gild their armour, or other habiliments of war.

Erigimus. We erect.

Erraticum. A stray or wandering beast.

Error coram nobis. A writ of error brought in the same Court in which the judgment is given, in cases of error in the process or through the default of the clerks. So called because the record and process upon which it was founded were stated in the writ to remain before us (*coram nobis*).

Error de personâ. See *Error nominis*.

Error ad sua principia referre, est refellere. To refer errors to their principles, is to refute them.

Error scribentis nocere non debet. The mistakes of the writer ought not to do harm.

Error fucatus nudâ veritate in multis est probabilior; et sæpenumero rationibus vincit veritatem error. Varnished error is in many things more probable than naked truth; and very frequently error conquers truth by reasoning.

Error nocet erranti. An error hurts him that errs.

Error nominis. A mistake in the name of a person, as distinguished from an error de personâ, a mistake as to the person or identity.

Error personæ. See *Error nominis*.

Error, qui non resistitur, approbatur. An error, which is not resisted, is approved.

Erubescit lex filios castigare parentes. The law blushes when children correct their parents.

Eruditus in lege. Well skilled in law.

Escapio quietus. Delivered from that punishment which by the laws of the forest lay upon those whose beasts were found upon forbidden land.

Escapium. Escape; that which comes by chance or accident.

Eschaeta vulgò dicuntur quæ decidentibus iis quæ de rege tenent cum non existit ratione sanguinis hæres, ad fiscum relabuntur. Those things are commonly called escheats which revert to the exchequer from a failure of issue in those who hold of the king, when there does not exist any heir by consanguinity.

Esse. To be; in being. See *In esse*.

Esse in bonis. To be in possession of a thing.

Essendi quietum de tolonio. To be quiet about a toll. A writ to be quit of toll. See *De essendo*...

Essoin de infirmitate. An excuse from appearing in Court on the ground of illness.

Essoin de infirmitate resiantie. An excuse from appearing in Court on the ground of being in ill-health and confined in bed. Also called *de malo lecti*.

Essoin de infirmitate veniendi. An excuse from appearing in Court on the ground of falling sick while coming to Court. Also called *de malo veniendi*.

Essoin de malo villæ. This was when the defendant was in Court the first day; but gone without pleading, and being afterwards surprised by sickness, &c., could not attend but send two *essioners* who openly protested in court that he was detained by sickness in such a *village*.

Essoin de servitio regis. An excuse from appearing in Court on the ground of being engaged in the service of the king.

Essoin de ultra mare. An excuse from appearing in Court on the ground being beyond seas.

Est enim ad vindicanda furtiva nimis atrox, nec tamen ad refræcanda sufficiens; quippe neque furtum simplex tam ingens facinus est, ut capite debeat plecti; neque ulla poena est tanta, ut ab atrocissimis cohibeat eos; qui nullam aliam artem quærendi victus habent. Truly the law is too severe in punishing thefts, and at the same time unequal to curb them; for a simple theft is not so heinous a crime, that it should merit a capital punishment; nor is any punishment so great, that it can prevent those from committing robberies, who have no other means of seeking subsistence. Capital punishment for theft is now obsolete.

Esto perpetua. Be, or live, perpetual.

Estoppel. To stop

Estovers. *Estovers.* *Estoverium.* Wood cut from a farm by the tenant for the uses thereof, and for other necessities. Also nourishment or maintenance; also a wife's alimony.

Estoveria sunt arandi, arandi, construendi et claudendi. Estovers are of fire-bote, plough-bote, housebote and hedgebote, *i.e.*, for fuel, or for repairing a plough, house or hedge.

Estoveriis habendis. A writ for a wife judicially separated to recover her alimony or estovers.

Et heredibus. And heirs.

Et heredibus suis. And his heirs.

Et hoc paratus est verificare. And this he is prepared to verify. Words formerly used at the conclusion of a common law pleading containing new affirmative matter.

Et ideo. And therefore.

Et ideo decunter liberi. And therefore they are called free.

Et non. And not.

Et quidem naturali jure communia sunt omnium hæc aer, aqua profluens, et mare, et per hoc litora maris. By the law of nature, these things are common to mankind, the air, running water, the sea, and consequently the shores of the sea. See *Qui prior est tempore...*

Et sequitur. And it follows.

Et sic ad infinitum. And so to eternity.

Et sic de similibus. And so of similar cases,

Et si super totum, &c. And if upon the whole, &c.

Eum qui nocentum infamat, non est æquum et bonum ob eam rem condemnari; delicta enim nocentium nota esse oportet et expedit. It is not just or proper to condemn him who describes a bad man; for it is useful and beneficial that the misdeeds of bad men should be exposed.

Eundo. In going,

Eundo, morando et redeundo. In going, remaining or staying, and returning. See s. 642 of the Civ. Pro. Code XIV of 1882, under the maxim *Cessante ratione...*

Evidentia rei. The evidence of the thing.

Ex. Out of; from.

Ex abrupto. Without preparation; suddenly.

Ex absurdo. From, or following, an absurdity.

Ex abundantanti cauteld. From abundant or excessive caution.

Ex abusu non argumentum ad desuetudinem. The abuse of a thing is no argument for its discontinuance. Thus we have heard of debtors having been made the victims of personal spleen by their creditors, but it would not be fair to argue, on this ground alone, against the practice of imprisonment for debt.

Exacta diligentia. Extreme diligence.

Exactissima diligentia. See *Diligentia*.

Exactor regis. The king's collector of taxes; also a sheriff.

Ex adverso. From the opposite side.

Ex æquo et bono. In equity and good conscience. From justice and honor.

Ex animo. Conscientiously; in perfect sincerity; heartily; from the heart.

Ex antecedentibus et consequentibus fit optima interpretatio. A passage will be best interpreted by reference to that which precedes and follows it. The best interpretation is made from the context. The context is to be considered in interpreting any phrase or clause, and not the mere isolated phrase or clause. See *Ex precedentibus...*

It is an important rule of construction, that the meaning of parties to a particular instrument should be collected *ex antecedentibus et consequentibus*; that is to say, every part of it should be brought into action, in order to collect from the whole one uniform and consistent sense, if that may be done (*Per Lord Allenborough, Barton v. Fitzgerald*, 15 East, 541; 13 R. R. 519); or, in other words, the construction must be made upon the entire instrument, and not merely upon disjointed parts of it (*Lord North v. Bishop of Ely*, cited 1 Bulst. 101; *Doe v. Meyrick*, 2 Cr. & J. 280; 37 R. R. 687); the whole context must be considered in endeavouring to collect the intention of the parties although the immediate object of inquiry be the meaning of an isolated clause (*Coles*

v. *Hulme*, 8 B. & C. 568; 32 R. R. 486). In short, the law will judge of a deed or other instrument, consisting of divers parts or clauses, by looking at the whole; and will give to each part its proper office, so as to ascertain and carry out the intention of the parties (*Hobart*, 275; *Doe v. Guest*, 15 M. & W. 160).

The recital in a deed or agreement may be looked to in order to ascertain the meaning of the parties, and is often highly important for that purpose (*Marquis of Cholmondeley v. Lord Clinton*, 2 B. & Ald. 625; 4 Bligh, 1; 21 R. R. 419); and the general words of a subsequent distinct clause or stipulation may often be explained or qualified by the matter recited (*Payler v. Homersham*, 4 M. & S. 423; 16 R. R. 416). Where the words in the operative part of a deed are clear and unambiguous, they cannot be controlled by the recitals or other parts of the deed; but where those words are of a doubtful meaning, the recitals and other parts of the deed may be used as a test to discover the intention of the parties and to fix the true meaning of those words (*Walsh v. Trevanion*, 15 Q. B. 751). In construing a statute, it is the established rule that the intention of the law-giver and the meaning of the law are to be ascertained by viewing the whole and every part of the Act (*Per Lord Herschell*, 14 App. Cas. 506).

In ascertaining whether a deed, confessedly ambiguous, amounts to a usufructuary mortgage or to a lease in perpetuity, the Judge should look within the four corners of the instrument before him and ascertain from it what kind of transaction the parties had in view when they entered into it (*Lala Doul Narain v. Runjit Singh*, 1 C. L. R. 256).

An instrument must be taken as a whole, and the true construction to be put on it should be that which, being reasonable, would also give effect to all parts of it (*Deputy Commr. of Rai Bareilly v. Ram Pal Singh*, 11 Cal. 237, P. C.; L. R. 12 I. A. 1).

The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other, and for this purpose a codicil is to be considered as part of the will (*Ind. Suc. Act X of 1865*, s. 69).

If the same words occur in different parts of the same document, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary (*Ibid.*, s. 73).

The words "or other thing" in s. 328 of the Penal Code must be referred to the preceding words, and be taken to mean "unwholesome or other thing," and not other thing simply (*Queen v. Jotee Ghorraee*, 1 W. R. Cr. 7).

The words "bull" and "cow" in s. 429 of the Penal Code include the young of those animals. The section specifies the more

valuable of the domestic animals, without any regard to age; but in respect of other kinds of the animals not so specified, the section would not apply, unless the particular animal in question was shown to be of the value of fifty rupees or upwards (*Hari Mandie v. Jafar*, 22 Cal. 457).

See *Noscitur a sociis*.

Ex arbitrio judicis. At the will of the judge.

Ex assensu patris suo. By the consent of the father; a sort of dower. See *Assensu*...

Ex assensu suo. By his own assent.

Excambium. Exchange.

Ex capite lecti. Reduction *ex capite lecti*, was the challenge of any deed or disposition affecting heritage or land in Scotland, which might formerly be made by the heir, if the grantor or testator at the time of making the disposition, was on his death bed. This presumption of "death bed" might be rebutted by showing that he lived sixty days afterwards, or subsequently went to church or market unsupported. The doctrine of reduction *ex capite lecti* is now entirely abolished.

Ex cathedrâ. With an air of authority; with the weight of one in authority; originally applied to the decisions of Popes from their *cathedra*, or chair.

Exceptâ dignitate regali. The royal dignity excepted.

Exceptio. The defendant's plea to the plaintiff's statements.

Exceptio cognitioria. An objection taken to the sufficiency of the attorney who claimed to represent one of the parties.

Exceptio ejusdem rei, cujus petitur dissolutio nulla est. A plea of that thing which is sought to be dissolved, is a nullity.

Exceptio falsi omnium ultima. A plea of that which is false is the last of all.

Exceptio litis dividuæ. An objection that the claim made in the action was the portion divided or split off from a certain other claim made in a former action.

Exceptionem rei judicatæ ob stare quoties eadem questio inter easdem personas revocatur.—The defence of *rei judicatæ* holds good when the same question is brought again between the same parties.

Exceptio non numeratæ pecuniæ. The defence that money had never been advanced.

Exceptio nulla est versus actionem quæ exceptionem perimit. A plea against an action which entirely destroys the plea is a nullity.

Exceptio probat (firmat) regulam de rebus non exceptis. An exception proves (confirms) the rule concerning things not excepted. An exception proves that the rule exists. See *Expressio unius*...

Exceptio quæ firmat legem, exponit legem. An exception which confirms the law, expounds the law.

Exceptio rei judicate. (*Sc. L.*) A defence that the matter has been adjudged already in another court between the same parties.

Exceptio rei residue. An objection that the action was one which might have been, but had not been, joined with a certain former action.

Exceptio semper ultima ponenda est. An exception is always to be put last.

Exceptis excipiendis. With all necessary exceptions.

Excerpta. Extracts.

Excessivum in jure reprobatur. Excess in law is reprehended. All excess is condemned by law. Whatever the law ordains must be within the rules of reason. Thus the law awards liberal, but by no means allows excessive damages.

Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive (*Ind. P. C. XLV of 1860, s. 63*).

Excessus in re quolibet jure reprobatur communi. Excess in anything is reprehended at Common Law.

Excommunicatio. Excommunication.

Excommunicato capiendo. Taking an excommunicated person. When a person was excommunicated for contempt of an order of the Ecclesiastical Court, the bishop was allowed to certify the contempt to the Sovereign in Chancery, who thereupon issued a writ called *significavit* or *de excommunicato capiendo*, directing the sheriff of the county to take the offender and imprison him in the county jail until he was reconciled to the church.

Excommunicato deliberando. A writ to the sheriff for the delivery of an excommunicated person out of prison, upon certificate from the ordinary of his conformity to the ecclesiastical jurisdiction.

Excommunicato interdictur omnis actus legitimus, ita quod agere non potest, nec aliquem convenire, licet ipse ab aliis possit conveniri. Every legal act is forbidden to an excommunicated person, so that he cannot act, nor sue any person; but he may be sued by others.

Excommunicato recapiendo (or recipiendo). A writ for the retaking of an excommunicated person unlawfully released before he gave caution to obey the authority of the church.

Excommunicatum. Excommunicated.

Ex concessio. As has been already allowed; from what has been granted. Admittedly. Arguments *ex concessio*, i. e., arguments from admissions made by an adversary or opponent.

Ex concubinâ. From concubinage. See *Mulieratus*.

Ex confesso. By one's own confession; confessedly. *In confesso* is also used to express the same idea.

Ex contractu. Of or from a contract. Actions *ex contractu* are actions arising out of breaches of contract, express or implied.

Ex contractu vel ex delicto. From a contract or from a fault (tort).

Ex curia. Out of Court.

Excusat aut extenuat delictum in capitalibus quod non operatur idem in civilibus. In capital causes an offence might be excused or extenuated; which will not have the same effect in civil injuries. In capital cases, the law is in favour of life, and will not punish with death unless a malicious intention appear; but it is otherwise in civil actions, where the intent may be immaterial if the act done were injurious to another.

Excusatio non petita fir accusatio manifesta. An excuse that is uncalled for is a convincing proof of guilt.

Ex debito justitiæ. From a debt of justice; from what is owed by justice, or of right; as a matter of right, in opposition to a matter for the favour or discretion of the Court. For example, a pardon granted *ex debito justitiæ* to an approver on the accused being convicted. An improper rejection of evidence in an action is ground for a new trial as a matter of right, or *ex debito justitiæ*.

Ex delicto. *Ex maleficio.* From a fault or offence. From a tort. Actions *ex delicto* or *ex maleficio*, are actions founded on some wrong other than a breach of contract, express or implied.

Ex delicto non ex supplicio emergit infamia. Infamy arises from the crime, not from the punishment.

Ex desuetudine amittuntur privilegia. Rights are forfeited by non-user. For example, a continuous easement is extinguished when it totally ceases to be enjoyed as such for an unbroken period of twenty years; and a discontinuous easement extinguished when, for a like period, it has not been enjoyed as such, unless the dominant owner, within such period, registers, under the Indian Registration Act, 1877, a declaration of his intention to retain such easement, in which case, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration (*Ind. Ease. Act V of 1882, s. 47*). A suit for possession of immoveable property when the plaintiff while in possession of the property has been dispossessed or has discontinued the possession must be brought within twelve years from the date of the dispossession or discontinuance (*Ind. Lim. Act XV of 1877, Sch. II, Art. 142*).

Ex diuturnitate temporis. From length of time.

Ex diuturnitate temporis omnia præsumuntur rite et sollemniter esse acta. From lapse of time all things are presumed to have been done rightly and properly. See *Omnia præsumuntur rite...*

Ex dolo malo non oritur actio. A right of action cannot arise out of fraud.

An action cannot be maintained which is founded in fraud, or which springs *ex turpi causâ*, for *ex turpi causâ non oritur actio*. The consideration or object of an agreement is unlawful if it is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral or opposed to public policy. Every agreement of which the object or consideration is unlawful is void (*Ind. Con. Act IX of 1872, s. 23*). Fraud means and includes any of the following acts committed by a party to an agreement or with his connivance or by his agent, with intent to deceive another party thereto or his agent or to induce him to enter into the agreement:—(1) The suggestion, as a fact, of that which is not true, by one who does not believe it to be true; (2) The active concealment of a fact by one having knowledge or belief of the fact; (3) A promise made without any intention of performing it; (4) Any other act fitted to deceive; (5) Any such act or omission as the law specially declares to be fraudulent. Mere silence as to facts likely to affect the willingness of a person to enter into an agreement is not fraud, unless the circumstances of the case are such that regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech (*Ibid.*, s. 17).

It is a general proposition that an agreement to do an unlawful act cannot be supported at law,—that no right of action can spring out of an illegal contract; and this rule, which applies not only where the contract is especially illegal, but whenever it is opposed to public policy, or founded on an immoral consideration, is expressed by the well known maxim *ex turpi causâ non oritur actio* and is in accordance with the doctrine of the civil law, *pacta quæ turpam causam continent non sunt observanda*.

Illegality may be pleaded as a defence to an action on a bond (*Ind. Evi. Act I of 1872, s. 92, proviso 1*). The leading case on this subject is *Collins v. Blantern* (2 Wils. 341; 1 Smith, L. C.) in which it was alleged that the bond had been given to the obligee as an indemnity for a note entered into by him for the purpose of inducing the prosecutor of an indictment for perjury to withhold his evidence. For the plaintiff it was contended that the bond was good and lawful, the condition being singly for the payment of money, the unlawful consideration not appearing upon the face of it. *Held*, that the bond was void *ab initio*, and that the facts of the illegality might be specially pleaded. It was observed by Wilmut, C. J.,—"This is a contract to tempt a man to transgress the law, to do that which is injurious to the community; it is void by

the common law; and the reason why the common law says such contracts are void is for the public good: *you shall not stipulate for inequity*. All writers upon our law agree in this—no polluted hand shall touch the pure fountains of justice."

A contract would be vitiated by reason of illegality if it appeared upon the face of the plaint, or if it were established by evidence independently of the written agreement, that the arrangement was that the defendant should use corrupt or illegal means, or improperly exercise any personal influence which he possessed, or professed to possess, over a public servant (*Pichakutty Mudali v. Narayanappa Aiyar*, 2 Mad. H. C. R. 243; *Ind. P. C. XLV of 1860, ss. 162-3*).

Contracts which are illegal at common law are usually deemed so on one of two grounds; first, because they are tainted with fraud or otherwise violate morality; secondly, because they are opposed to the policy of the law or public policy. For examples of the latter class, see *Conventio vincit legem*.

Similarly agreements to compromise criminal proceedings are illegal and void (*Ex parte Critchley*, 3 D. & L. 527; 15 L. J. Q. B. 124; *Re Campbell*, 14 Q. B. D. 32; *Lound v. Grimwade*, 39 Ch. D. 605; 57 L. J. Ch. 725) and are punishable unless where the offences to which the proceedings relate are such as may be lawfully compounded (*Ind. P. C. XLV of 1860, ss. 213 and 214; Crim. Pro. Code V of 1898, s. 345*).

A contract to pay money in consideration of foregoing a criminal prosecution is opposed to public policy, and will not be enforced. The consideration to support the promise in such a contract is a vicious consideration (*Kandan Chetti v. Coorjee Setti*, 2 Mad. H. C. R. 187; observing upon *Keir v. Leeman*, 6 Q. B. 308).

The English common law rule that contracts for the compounding or suppressing of criminal charges for offences of a public nature are illegal and void, has no application to a contract for compounding the prosecution of criminal proceedings for an offence against the municipal law of a foreign country (*Subraya Pillai v. Subraya Mudali*, 4 Mad. H. C. R. 14).

An agreement to assist another, for reward, in procuring a wife is void as being contrary to public policy (*Vaithyanathan v. Gangarazu*, 17 Mad. 9).

Plaintiff applied for leave to sue as a pauper stating that a young girl had been left in her charge and had been maintained by her for a number of years; that arrangements had been made with a Bhatia to get this girl married and that she (the plaintiff) was to receive Rs. 2,500 on the marriage, that the defendant had also agreed to pay her (the plaintiff) Rs. 2,000 if she was to give the girl to him in marriage. *Held*, that the alleged agreement on which the suit

was brought was immoral and against public policy, and that the action was not maintainable (*Dulari v. Vallabdas Pragji*, 13 Bom. 126).

Plaintiff agreed to give his daughter in marriage to defendant's nephew in consideration of a payment of Rs. 400. It was not alleged that the money was to be a dowry or settlement for the bride. Rs. 200 were paid, and defendant executed a bond for the balance. The marriage took place in the *asura* form. Plaintiff now sued on the bond. *Held*, the consideration for the bond was not unlawful (*Vishwanathan v. Saminathan* 13 Mad. 83). See also *Jogeswar v. Panch Kuari* (5 B. L. R., A. C., 395).

But *held*, in *Dholidas v. Fulchand* (22 Bom. 658), that a contract which entitles a father to be paid money in consideration of giving his son or daughter in marriage is against public policy, and cannot be enforced in a court of law.

A contract entered into by Hindus living in Assam, by which it is agreed that, upon the happening of a certain event, a marriage is to become null and void, is contrary to the policy of the law, and a suit cannot be maintained upon it (*Sitaram v. Mt. Aheerree Heerahnee*, 11 B. L. R., A. C., 129).

In consideration of advances of money made by N to V, a married woman (both being of the Kunbi caste) in order to enable her to obtain a divorce from her husband, V promised to marry N as soon as she should obtain a divorce. N subsequently sued V to recover the advances. *Held*, that the agreement having for its object the divorce of the defendant from her husband and her marriage with the plaintiff was *contra bonos mores*, and, therefore, void (*Bai Vijli v. Nansa Nagar*, 10 Bom. 152.)

A landlord cannot recover the rent of lodging knowingly let to a prostitute who carries on her vocation there (*Gaurinath Mookerjee v. Madhumani Peshaker*, 9 B. L. R., Ap., 37).

The father of *naikins* (dancing girls) passed mortgage bonds for money advanced to him. The bonds stated that the object of the loan was to enable the father to get his daughters taught singing, and for household expenses. *Held*, that the bonds were not void, inasmuch as amongst the community of *naikins* singing was not necessarily acquired by the women with a view of practising prostitution. It was as distinct mode of obtaining a livelihood not necessarily connected with prostitution, although it might be true as a fact, that most of those who sing lead a loose life (*Khubchand v. Beram*, 13 Bom. 150).

Past co-habitation would not be an immoral consideration, if consideration it can properly be called, for a promise to pay a woman an allowance (*Dhiraj Kuar v. Bikramjit Singh*, 3 All. 787).

A bequest or transfer upon a condition the fulfilment of which would be contrary

to law or to morality is void (*Ind. Suc. Act X of 1865*, s. 114; *Trans. of Pro. Act IV of 1882*, s. 25).

Plaintiff brought a suit against a jail-daroga for the recovery of Rs. 50, which, she alleged, he took from her on condition of causing the release of her husband. *Held*, that as this was a contract against public policy, and was intended to evade the course of law, money paid under such an illegal and immoral contract could not be recovered by suit (*Protima Aurat v. Dukhia Sirkar*, 9 B. L. R., Ap., 88).

The ground on which agreements which savour of champerty or maintenance are held to be void in this country is that they are contrary to public policy (*Chunderkant, Mookerjee v. Ramcoomar Koondra*, 13 B. L. R., O. C., 580; *Mulla Jaffarji Tyeb Ali v. Yacali Kadar Bi*, 7 Mad. H. C. R. 128).

To constitute "maintenance" improper litigation must have been stirred up with a bad motive or purpose contrary to public policy and justice. "Champerty" is a species of "maintenance" and of the same character, but with the additional feature of a condition or bargain providing for a participation in the subject matter of the litigation (*Pitchaiyutti Chetti v. Kamala Nayuthan*, 1 Mad. H. C. R. 153).

A contract the effect of which is to assist another in carrying on litigation against a third party, made with the express declaration that it was out of spite and ill feeling against such third party, is a contract against public policy (*Bamandas Banerjee v. Haralal Shaha*, 1 B. L. R., S. N., 9).

An agreement executed by a client to his vakil after the latter had accepted a vakalatnama, whereby the client bound himself to pay to the vakil, in the event of his conducting the suit to a successful termination, a certain sum in addition to the vakil's full fees, *held*, *nudum pactum*, and a suit founded upon it dismissed as unsustainable (*Ramohandra v. Kulu Raju*, 2 Bom. 362; *Fuller v. Ranee Bishroom Koor*, 3 N.-W. P. 25). But if such *inam patra* is executed contemporaneously with the vakalatnama, it is not *nudum pactum*, and, having regard to s. 7 of Act I of 1846, cannot be considered as illegal (*Shivram Hari v. Arjun*, 5 Bom. 255; *Parashram Vaman v. Hiramun*, 8 Bom. 413).

The Court should not enforce an agreement to reward a pleader for his professional services by a share of the property or amount recovered in the suit in which he is retained. A contract made in good faith by a person with a litigant to supply him with funds to carry on the suit on the security of the property in dispute will be enforced. Such a contract is distinguishable from an officious intermeddling in the suits of other persons or acts tending to promote unnecessary litigation (*Nathoo Lall v. Budree Pershad*, 3 Agra, 286; 1 N.-W. P. 1).

If a document is fraudulent, no title can be acquired under it even though it is registered, for it is a well recognized maxim of law that no man can gain title by fraud (*Per Peacock, C. J., Sheikh Rahmatulla v. Sheikh Sariutulla*, 1 B. L. R. 82, F. B.; *Joshua v. Alliance Bank of Simla*, 22 Cal. 185; *Ram Autar v. Dhanauri*, 8 All. 540; *Narasimulu v. Somanna*, 8 Mad. 167; *Bakshi v. Govinda*, 4 Bom. 595; *Narasanna v. Gavappa*, 3 Mad. H. C. R. 270; *Sreenath Bhuttacharjee v. Ramcomul*, 10 Moo. I. A. 220; 3 W. R. 43, P. C.; *Ramcomul v. Chundee Pershad*, 1 N.-W. P. 287; *Nettro Gopal Chunder v. Dwarkanath*, 1 W. R. 314; *Ram Chund v. Modhoo Soodun*, 7 W. R. 119; *Bhikdaree v. Kanhya*, 14 W. R. 24; *Dookbai Meer v. Shaikh Nassir*, 20 W. R. 100).

No foreign judgment shall operate as a bar to a suit in British India if it has been obtained by fraud (*Civ. Pro. Code XIV of 1882 s. 14*). Any party to a suit or proceeding may show that any judgment order or decree which is relevant under the Indian Evidence Act, and which has been proved by the adverse party, was obtained by fraud or collusion (*Ind. Evi. Act I of 1872 s. 44*).

Fraudulent conveyances made without consideration and in order to defraud creditors, or to delay the execution of any decree obtained by creditors are void as against such creditors (*Abdul Hye v. Mir Mahomed*, L. R. 11 I. A. 10; 10 Cal. 616; *Rangilbhai v. Vinayak Vishnu*, 11 Bom. 666; *Hormusji v. Cowasji*, 13 Bom. 297; *Bhagwant v. Kedari*, 2 Bom. L. R. 986; *Ind. P. C. XLV of 1860, s. 206*).

Fraud vitiates and corrupts everything, *fraus omnia vitiat et corrumpit*. The effect of fraud, however, is not absolutely to avoid a contract induced by it, but to render it voidable at the option of the party defrauded; and the contract continues valid until the party defrauded has elected to avoid it (*Ind. Con. Act IX of 1872, s. 19*; *Reese Silver Mining Co. v. Smith*, L. R. 4 H. L. 61; 89 L. J. Ch. 8). There are, however, many kinds of moral fraud, which clearly could not be made available, either as a ground of action, or by way of defence before a Court of law. Thus a vendor is entitled to sell for the best price he can get, and is not in any way liable at law for a simple commendation of his own goods, however worthless they may be, provided he has not made any false statement as to their quality or condition, nor asserted anything respecting them which may amount to a warranty in legal contemplation. See *Ea quæ commendat...*

It must be observed, however, that a contract, although illegal and void as to part, is not necessarily void *in toto*. If a bond be given, with condition to do several things, some are agreeable to law and some against it, the bond shall be good as to doing the former, and only void as to doing the latter (*Chesman v. Nainby*, 2 Ld. Raym. 1459). If a deed, not founded upon an

illegal consideration, contain two *severable* and *independent* covenants, of which the one is legal and the other not, the illegality of the one does not usually prevent the enforcement of the other (*Gaskell v. King*, 11 East, 164; 10 R. R. 462; *Mallan v. May*, 11 M. & W. 653). The general rule is that where you cannot sever the illegal from the legal part of a covenant, the contract is altogether void (*Ind. Con. Act IX of 1872, s. 24*), but where you can sever them, whether the illegality be created by statute or by the common law, you may reject the bad part and retain the good (*Per Wills, J., Pickering v. Ilfrcombe R. Co.*, L. R. 3 C. P. 235; 12 L. J. C. P. 118; *Robinson v. Omaney*, 23 Ch. D. 285; 52 L. J. Ch. 440).

In connection with this maxim, see *In pari delicto...*

Ex donatione regis. Of the king's free gift.

Exeat. Leave to depart. See *Ne exeat...*

Executio est executio juris secundum judicium.

Execution is the execution of the law according to the judgment.

Executio est finis et fructus legis. Execution is the end and fruit of the law.

Executio est fructus, finis et effectus legis. Execution is the fruit, end, and effect of the law. See *Juris effectus...* A suit can properly be said to have terminated when the decree passed therein is wholly executed. A mere decree cannot afford a party any substantial redress, unless it is put in execution, and the Calcutta High Court strongly condemned the practice of striking off execution cases from the file in order to clear it and enable judicial officers to make their quarterly returns, as productive of the greatest hardship and injustice to the suitors (*Gaur Mohan Bandopadhyaya v. Tarachand Bandopadhyaya*, 3 B. L. R., Ap., 17). Execution, however, cannot be obtained on a merely declaratory decree (*Muniyan v. Perya Kulandai Ammal*, 1 Mad. H. C. R. 184).

The Court will not be deterred from making a decree by difficulties to be expected in carrying it out (*Per Holloway, J., Purappavanalingan Chetti v. Nullasivan Chetti*, 1 Mad. H. C. R. 415). See *Parum est...*

Executio juris non habet injuriam. The execution of law does no injury. The law will not in its executive capacity work a wrong. Legal process, if regular, does not afford a cause of action.

If an action be brought in a Court which has jurisdiction, upon insufficient grounds, or against the wrong party, no injury is thereby done for which an action can be maintained. See *Nullus videtur dolu facere...* But if an individual, under colour of the law, does an illegal act, or if he abuses the process of the Court to make it an instrument of oppression or extortion, this is a fraud upon the law, by the commission of which liability will be incurred (*Per Pollock, C. B., Smith v. Monteith*, 13 M. & W. 439). If proceed-

ings in an action were against A, and a writ of execution is issued by mistake against the goods of B, trespass will clearly lie at suit of the latter, against the execution-creditor (*Jarmain v. Hooper*, 7 Scott, N. R. 668). In such cases the maxim applies only in the secondary sense above noticed, because the proceedings actually taken are not sanctioned by the law, and, therefore, the party taking them, although acting under the colour of legal process, is not protected.

If a sheriff, having two writs of *ca. sa.*, the one valid and the other invalid, arrest on the latter alone, he cannot justify the arrest of the person under the valid writ (*Hooper v. Lane* 6 H. L. Cas. 443). Nor can the sheriff, while a person is unlawfully in his custody by virtue of an arrest on an invalid writ, arrest that person on a good writ; and to allow the sheriff to make such an arrest while the party is unlawfully confined by him, would be to permit him to profit by his own wrong, and, therefore, cannot be tolerated (*Per Lord Cranworth*, 6 H. L. Cas. 551; *Countess of Rutland's Case*, 6 Rep. 53).

Executione faciendâ. A writ commanding the execution of a judgment.

Executione faciendâ in withernamium. For doing execution in withernam. A writ that lay for taking the cattle of one who has conveyed the cattle of another out of the county, so that the sheriff cannot replevy them. See *Capias in withernam*.

Executione judicii. An ancient writ directed to the judge of an inferior court, or the sheriff or bailiff of an inferior court, to do execution upon a judgment therein, or to return some reasonable cause why he delays execution.

Executor literatus. An executor who has the assets of his testator, who in his lifetime made himself liable by a wrongful interference with the property of another.

Exempla illustant, non restringunt legem. Examples illustrate, not restrain, the law.

The object of illustrations is to illustrate. They are not intended to supply any omission in the written law or to put a strain on it. They make nothing law which would not be law without them. The law illustrated by them must be considered to be contained in the definitions and enacting clauses of the particular Act.

Illustrations in Acts of the Legislature ought never to be allowed to control the plain meaning of the section to which they are appended, especially when the effect would be to curtail a right which the section in its ordinary sense would confer. (*Koylash Chunder Ghose v. Sonatum Chung Barooie*, 7 Cal. 132; 8 O. L. R. 281).

Exempli gratiâ. As for example; as for instance. Abbrev. *e. g.* or *ex. gr.*

Exemplo perniciosum est ut ei scriptura credatur qua unusquisque sibi debitorem constituit. It is a pernicious example that credit should be given to a writing by which a man constitutes another his debtor.

Exemptio. Exemption.

Exequatur. A permission given by a government to a foreign consul to enter on his appointment.

Exercitor. A ship-master; captain; owner of a ship.

Exercitor navis. The temporary owner or charterer of a ship.

Ex facto jus oritur. The law arises from the fact. Until the fact be settled, the law cannot apply. If the fact be perverted or misrepresented, the law which arises thence will unavoidably be unjust or partial. See *Ad questiones...*

The law slumbers, until roused into activity by some act or event (*i. e. fact*); in other words, rights and duties may not exist in the abstract, but only around some concrete subject matter or person.

Ex frequenti delicto augetur poena. Punishment increases with increasing crime.

Ex gratiâ. Of or by favour; as a matter of favour.

Ex gratia curiæ. By favour of the Court. See *Ex rigore juris*.

Ex gravi querelâ. A writ that lay for one to whom lands or tenements were devised, when the heir of the testator detained them from him.

Exhereditatio. The act of disinheriting. The exclusion of a child by his father from inheritance.

Ex his omnibus causis quæ jure non valuerunt vel non habuerunt effectum, secuti per errorem solutione, condictioni locus erit. Wherever money has been paid by mistake, for a cause which the law does not support, or which has been followed by no effect, an action may be brought for its recovery. See the Indian Contract Act IX of 1872, s. 72. But money paid on an illegal or immoral consideration cannot be recovered, for, *in pari delicto potior est conditio defendentis*.

Exigent, or Exigi facias. That you cause to be exacted or demanded. A writ that lay where the defendant in a personal action could not be found, proclaiming and calling him, five county-court days, one after another, and charging him to appear on pain of outlawry. It lay also in an indictment of felony, where the party indicted could not be found. See *Allocato comitatu*.

Exilium. Exile; spoiling. It is applied specially to the unlawful turning of enfranchised tenants out of their holdings.

Exilium est patriæ privatio, natalis soli mutatio, legum nativarum amissio. Exile is a privation of country, a change of natal soil, a loss of native laws.

Ex industria. Purposely; on purpose.

Ex integro. Afresh; anew.

Exitus. Issue; child or children; offspring. The rents and profits of land. The conclusion of pleadings.

Ex justis nuptiis procreatus. Born of lawful marriage. See *Hæres legitimus*...

Exlegalitus. He who is prosecuted as an outlaw.

Ex-lex. Beyond the law; bound by no law; an outlaw.

Ex licentiâ regis. By the license of the king.

Ex majori cautela. From greater caution.

Ex maleficio. From mischief or wrong.

Ex maleficio non oritur contractus. A contract does not arise from a vicious act. A contract does not arise out of an act radically vicious and illegal. Those who come into a Court of justice to seek redress must come with clean hands and must disclose a transaction warranted by law (*Petrie v. Hannay*, 3 T. R. 422); and it is quite clear that a Court of justice can give no assistance to the enforcement of contracts which the law of the land has interdicted. See *Ex dolo malo*...

Ex malis moribus bona leges nata sunt. Good laws arise from evil manners.

Ex mandato regina. By the order of the Crown.

Ex materna. See *Ex parte materna*.

Ex mensâ et thoro. See *A mensâ*...

Ex merâ gratiâ. Out of mere favour.

Ex merito justitiæ. As he deserves in justice.

Ex mero motu. Out of mere will; of his own accord. Words used in the king's charters and letters patent, as a bar to exceptions, to signify that he grants them of his own mere motion, and without being influenced by any false suggestions from any party. See *Ex proprio*...

Ex multitudine signorum colligitur identitas vera. True identity is collected from a number of signs. The identity of a thing is to be gathered from a multitude of circumstantial descriptions. See *Præsentia corporis*...

Ex naturâ rei. From the nature of the case.

Ex necessitate. Of necessity; necessarily.

Ex necessitate legis. From the necessity of law.

Ex necessitate rei. From the urgency or necessity of the case.

Ex nihilo nihil fit. Nothing produces nothing. See *Nihil dat qui*...

Ex nudo pacto non oritur actio. An action does not arise from a bare promise or agreement, i. e., one not supported by consideration.

A consideration of some sort or other is so necessary to the forming of a contract, that a *nudum pactum*, or agreement to do or pay something on one side without any

compensation on the other, will not at law support an action, and a man cannot be compelled to perform it. The term consideration is thus defined in the Indian Contract Act (IX of 1872, s. 2):—"When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or obtain from doing, something, such act or abstinence or promise is called a consideration for the promise." A promise to give another, for no consideration, Rs. 1000, is a void agreement (*Ibid.*, s. 25, *illus* [a]). A gratuitous promise or undertaking may indeed form the subject of a moral obligation, and may be binding in honour, but it does not create a legal responsibility.

Consideration is either *good* or *valuable*; the former is such as that of blood or of natural love and affection, as when a man grants an estate to a near relative, being influenced by motives of generosity, prudence, or natural duty. Deeds made upon this consideration are looked upon by the law as merely *voluntary*, and although good as between the parties (*Ind. Con. Act IX of 1872, s. 25 [1]*), are liable to be set aside in favour of creditors (*Hormusji v. Cowasji*, 13 Bom. 297). On the other hand, a *valuable* consideration is such as money, marriage, or the like, and this is esteemed by the law as an equivalent given for the grant (10 B. & C. 606).

The consideration for a promise must have some tangible value in the eye of the law (*Per Patteson, J., Thomas v. Thomas*, 2 Q. B. 859) and it is well settled that, as long as the consideration for a promise has some value, its adequacy is not material (*Westlake v. Adams*, 5 C. B. N. S. 248; 24 L. J. C. P. 271). An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given (*Ind. Con. Act IX of 1872, s. 25, Expl. 2*).

Under the English law nothing done or suffered by the promisee *antecedently* to the promise constituted a good consideration for the promise unless it was done or suffered *at the request* of the promisor. In *Eastwood v. Kenyon* (11 A. & E. 438) it was held that a mere moral obligation arising from a past benefit not conferred *at the request* of the defendant is not a good consideration and that the class of considerations derived from moral obligation includes only those cases in which there has been a *legal* right deprived of legal remedy. But there are circumstances under which the law will itself imply that the service had been undertaken by request of the promisor. Such request is implied in the following cases:—(1) Where the defendant has adopted and enjoyed the benefit of the service, in which case the maxim will

apply, *omnis ratihabitio retro trahitur et mandato priori equiparatur* (see also s. 70 of the Ind. Con. Act); (2) When the service consists in the plaintiff having been compelled to do that to which the defendant was legally compellable, as a man paying money to save his goods from attachment for another's debt, or a surety paying the debt of his principal (*Edmunds v. Wallingford*, 14 Q. B. D. 811; *Ind. Con. Act*, ss. 69 and 140); (3) Where the plaintiff voluntarily does that which the defendant might have been legally compelled to do, and the defendant afterwards in consideration of the service expressly promises (see s. 68 of the Ind. Con. Act).

Under the Indian Contract Act, anything already voluntarily done for the promisor, or which the promisor was legally compellable to do, is a good consideration to support a subsequent promise, whether or not it was done at the request of the promisor (s. 25 [2] and *illus.* [d]). Under cl. (3) of the same section a promise to pay wholly or in part a debt of which the creditor might have enforced payment but for the law of limitation of suits must be in writing and signed by the promisor or his agent. But such subsequent promise cannot convert into a debt that which of itself was not a legal debt (*Per Tindal, C. J., Kaye v. Dutton*, 7 M. & Gr. 811).

Consideration is also distinguished into *executed, concurrent, and executory* consideration. Looking to s. 2 of the Ind. Con. Act (*supra*), if the promisor or any other person *has done or abstained* from doing a thing, it is an executed consideration; if he *does or abstains* from doing the thing, it is a concurrent consideration; if he *promises* to do or abstain from doing the thing, it is an executory consideration. For example, A may sell his property to B, B having already paid the purchase-money, or on B's paying it at the time of sale, or on B's promise to pay it in future. In other words the consideration may be either *past, present, or future*.

Exoine. (Fr.) The excuse for not appearing in Court when cited. See *Essoin*.

Ex officio. Officially; by virtue of office. Any prerogative or jurisdiction which a person in office has, by virtue of that office, he is said to exercise *ex officio*. *Ex officio* information is a criminal information filed by the Attorney-General *ex officio* on behalf of the Crown in the Court of Queen's Bench; or an information filed by him in the Court of Chancery to have a charity property established. An oath *ex officio* was the oath by which a clergyman charged with a criminal offence was formerly allowed to swear himself to be innocent; also the oath by which the compurgators swore that they believed in his innocence.

Exoneratone secta. A writ that lay for the Crown's ward, to be free from all suit in the county court, &c., during wardship.

Exoneratone secta ad curiam baron. A writ of the same nature as above, issued by the guardian of the Crown's ward, and addressed to the sheriffs or stewards of the Court forbidding them to distrain him, &c., for not doing suit of Court, &c.

Exoneratur. That he be discharged. Let him be discharged. An entry formerly made on the bail-piece upon render of a defendant to prison in discharge of his bail. An entry of discharge of the bail made on the recognizance or bail-piece.

Exordium. The commencement of a deed, *i. e.*, the date and the names of the parties. The beginning of a speech or composition; introduction.

Ex pacto illicito non oritur actio. No action arises from or out of an illicit agreement or bargain. For example, the law will not lend its assistance to adjust the profits of a partnership formed for the purpose of deriving profit from an illegal adventure, or to settle the mutual claims of the parties engaged therein (*M'Callum v. Mortimer*, 9 M. & W. 642). See *Ex dolo*...

Ex parte. On behalf of one side; partly. An *ex parte* proceeding is a proceeding by one party in the absence of the other. An *ex parte* statement is a statement of one side only. An injunction granted *ex parte* is an injunction granted after hearing one side only. *Ex parte* preceding, a name in the heading of a reported case, indicates that the party whose name follows is the party on whose application the case is heard. An *ex parte* application is one made by a person who is not a party, or made in the absence of the opposite party.

Ex parte materna. On the mother's side.

Ex parte paterna. *Ex paterna.* On the father's side.

Ex parte regis. On the king's side.

Ex parte talis. A writ that lay for a bailiff or receiver, who, having auditors appointed to take his accounts, cannot obtain of them reasonable allowance, but is cast into prison.

Ex paucis plurima concipit ingenium. From few things the mind conceives many.

Expeditata arbores. Trees rooted up or cut down to the roots.

Expedit republica ne sua re quis male utatur. It is for the public good that no one use his property badly. A man must enjoy his own property in such a manner as not to invade the legal rights of his neighbour. See *Sic uteri tuo*...

Expedit reipublica ut sit finis litium. It is for the public good that there should be an end of litigation. See *Interest reipublica*...

Expense litis. Costs of suit, allowed to a plaintiff or defendant recovering in his action.

Expensis militum levandis. An old writ directed to the sheriff for levying the allowance for the knights of Parliament.

Expensis militum non levandis ab hominibus de antiquo dominio nec a natis. An old

writ to prohibit the sheriff from levying any allowance for knights of the shire upon such as held lands in ancient demesne.

Experientia per varios actus legem facit; magistra rerum experientia Experience by various acts makes law; experience is the mistress of things.

Experto crede. Believe an expert. See *Cuilibet in arte...*

Expleta. Expletica. Explecia. The rents and profits of an estate or land; as the hay of the meadows, the feed of the pasture, the corn of the arable land; the rents, services and such like issues.

Expositio. An explanation. An exposing of an infant.

Ex post facto. From an after-act; after a deed is done. The phrase signifies something done so as to affect another thing that was committed before. Thus a lease granted by a tenant for life to enure beyond his life may be confirmed *ex post facto* by the reversioner or remainderman. See *Nova constitutio...*

Ex post facto jure. A law made after the thing prohibited was done. A law visiting a past act with penal consequences. See *Nova constitutio...*

Ex precedentibus et consequentibus optima fit interpretatio. A passage will be best interpreted by reference to that which precedes and follows it. The best interpretation is made from the context. See *Ex antecedentibus...*

Expressa nocent, non expressa non nocent. Things expressed hurt, things not expressed do not.

Expressa non prosunt quæ non expressa prodeunt. The expression of things of which, if unexpressed, one would have the benefit, is useless.

Expressio eorum quæ tacite insunt nihil operatur. The expressing of those things which are silently implied, has no effect.

For instance, if land be let to two persons for the term of their lives, this creates a joint tenancy; and the words "and the survivor of them," if added, are mere surplusage, because, by law, the term would go to the survivor. An expression which merely embodies that which would in its absence have been implied by law, is altogether inoperative. Such an expression when occurring in a written instrument is denominated *clausula inutilis*. It is however desirable to express what the law would imply, in order to remove all doubt as to intention. *Abundans cautela non nocet.*

Under the ordinary law of mortgage the mortgagor is bound so long as the equity of redemption remains with him, to indemnify the estate against expenses incurred in protecting the title, so that where a mortgage bond contains stipulations under which the mortgagor engages to repay the mortgagee any costs he may incur in suits brought

against him by the mortgagor's co-sharers, and also any debts charged upon the mortgaged property which the mortgagee may pay (*Trans. of Pro. Act IV of 1882, s. 72*), the stipulations do not create any fresh obligation and require no additional stamp-duty (*Damodar Gungadhar v. Vamanrao Lakshman*, 9 Bom. 435).

The maxim was also applied in *Wroughton v. Turtle* (11 M. & W. 570) and in *Lawrence v. Boston* (7 Exch. 28) in reference to the Stamp Acts.

As regards bills of exchange, cheques, and promissory notes, the rule is that such instruments are presumed to be made upon, and *prima facie* import, consideration (*Neyo. Inst. Act XXVI of 1881, s. 118 (a)*), and the words "value received" express only what the law implies from the nature of the instrument and the relation of the parties apparent upon it (*Hatch v. Trayes*, 11 A. & E. 702), and then the maxim is applicable.

Expressio unius est exclusio alterius. The mention of one is the exclusion of another. By particularising one or more members of a class, or objects of a group, an intention may be indicated to exclude the rest.

Where there is an estate expressly limited by will, any increase of the estate by implication is excluded (*Roddy v. Fitzgerald*, 6 H. L. Cas. 856); and an implied covenant is to be controlled within the limits of an express covenant (*Noke's Case*, 4 Rep. 89). Where a lease contains an express covenant by the tenant to repair, there can be no implied contract to repair arising from the relation of landlord and tenant (*Standen v. Christmas*, 10 Q. B. 136). Where parties have entered into written engagements with express stipulations, it is manifestly not desirable to extend them by implications; the presumption is, that having expressed some, they have expressed all the conditions by which they intend to be bound under that instrument (*Aspdin v. Austin*, 5 Q. B. 683.)

But great caution is necessary in applying this maxim which is not of universal application, but depends upon the intention of the party as discoverable upon the face of the instrument or of the transaction (*Per Lord Campbell, Saunders v. Evans*, 8 H. L. Cas. 729). Where general words are used in a written instrument, it is necessary, in the first instance, to determine whether those general words are intended to include other matters besides such as are specifically mentioned, or to be referable exclusively to them, in which latter case only can the above maxim be properly applied (*Petch v. Tatin*, 15 M. & W. 110).

A will expressly subjecting the personal estate to certain charges to which it was before liable does not by force of the above maxim raise a necessary implication that it is not to bear other charges not so expressly directed to be paid out of it to

which it is primarily liable (*Brydges v. Phillips*, 6 Ves. 567).

In order to prevent a debt being barred by limitation (*Ind. Lim. Act XV of 1877*, s. 19) a conditional promise to pay "as soon as I can" is not sufficient unless proof be given of the defendant's ability to pay. The reason is that upon a general acknowledgment where nothing is said to prevent it, a general promise to pay ought to be implied; but where the party guards his acknowledgment and accompanies it with an express declaration to prevent any such implication, then the above maxim applies (*Tanner v. Smart*, 6 B. & C. 609; 30 R. R. 461). So, when the drawer of a bill, when applied to for payment, does not state that he has received no notice of dishonour, but merely sets up some other matter in excuse of non-payment, from this conduct the jury may infer an admission that the valid ground of defence does not in fact exist. (*Campbell v. Webster*, 2 C. B. 258).

Under the Indian Evidence Act I of 1872, s. 92, when the terms of any contract, grant or other disposition of property in writing have been proved, no evidence of any oral agreement or statement shall be admitted as between the parties for the purpose of contradicting, varying, or adding to, or subtracting from, its terms. But there are exceptions to this rule, viz.—(1) Any fact may be proved which would invalidate any document, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law; (2) The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved, having regard to the degree of formality of the document; (3) The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such instrument, may be proved; (4) The existence of any distinct subsequent oral agreement to rescind or modify any such document may be proved, unless where such document is required by law to be in writing, or is registered under the law for the registration of documents; (5) Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: but the annexing of such incident must not be repugnant to, or inconsistent with, the express terms of the contract; (6) Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Where the rent of a house was specified in a written agreement to be £26 a year, and the landlord in an action for use and occupation proposed to show, by parol evidence, that the tenant had also agreed to pay the ground rent, the Court refused to admit the evidence (*Preston v. Merceau*, 2 W. Bl. 1249; *Rich v. Jackson*, 4 Bro. C. C. 515).

Where the conditions of sale of growing timber did not state anything as to quantity, parol evidence that the auctioneer at the time of sale warranted a certain quantity, was held inadmissible (*Powell v. Edmunds*, 12 East, 6; 11 R. R. 316).

In commercial transactions, extrinsic evidence of custom or usage is admissible to annex incidents to written contracts in matters with respect to which they are silent (*Syers v. Jonas*, 2 Exch. 111). See *Optimus interpres rerum usus*.

Where in an instrument there are general words first, and an express exception afterwards, the ordinary principle has been held to apply, *expressio unius exclusio alterius* (*Spry v. Flood* 2 Curt. 365), for *exceptio probat regulam de rebus non exceptis*.

It sometimes happens that in a statute, the language of which may fairly comprehend many different cases, some only are expressly mentioned by way of example merely, and not as excluding others of a similar nature. The word "includes" in interpretation clauses of Acts is intended to be *enumerative* and not *exhaustive* (*Empress v. Raman Jijya*, 2 Mad. 7); it has an *extending* force, and does not *limit* the meaning of the term to the substance of the definition (*Nasiban v. Preosunker* 8 Cal. 534). But when it is intended to *exhaust* the signification of the word interpreted, the word "mean" is used (*Balvantrao v. Purshotam*, 9 Bom. H. C., A. C. 105), which is restrictive and excludes all things which are not enumerated. For instance, see the interpretations given in s. 2 of the Indian Stamp Act (II of 1899). In the same manner, where certain specific things are taxed, or subjected to a charge, it seems probable that it was intended to exclude everything else even of a similar nature, and *à fortiori*, all things different in *genus* and *description* from those which are enumerated. For example, where a statute enacted that every occupier of lands, houses, coal mines, or saleable underwood, should be rated for the relief of the poor, it was decided by the House of Lords, that as coal mines alone were mentioned in the Act as rateable, iron mines were not (*Morgan v. Crawshaw*, L. R. 5 H. L. 334; *Denison v. Holliday*, 1 H. & N. 631).

Where a general act of Parliament confers immunities which expressly exempt certain persons from the operation of its provisions, it excludes all exemptions to which the subject might have been before entitled at common law; for the introduction of the exemption is necessarily exclusive of all other independent extrinsic exceptions (*R. v. Cunningham*, 5 East, 478; 3 T. R. 442).

Expressio unius personæ est exclusio alterius. The mention of one person is the exclusion of another.

Expressum facit cessare tacitum. What is expressed, makes what is silent to cease. Where we find an express declaration we should not resort to implication. An express covenant qualifies the generality of

the law, and restrains it from going farther than is warranted by the agreement of the parties.

Expromissio. (Rom. L.) A species of novation; a creditor's acceptance of a new debtor (*expromissor*) who took the place of the old debtor, who was discharged. It differed from *delegation* in that the consent of the original debtor was not necessary.

Ex proprio motu. Of his own mere motion; spontaneously; as when a judge, without application from any party, orders a witness to be prosecuted for perjury, or commits him for trial. See *Ex mero*.

Ex provisione legis. From the provision of law.

Ex provisione mariti (or *vir*). From the provision of the husband. A tenant in tail *ex provisione viri* was a woman who had an estate in tail in property of her husband, or given by any ancestor of her husband to her and him jointly in tail. Now obsolete.

Expulit et disseisivit. He expelled and disseised. Words used in actions of forcible entry.

Ex relatione. On the report of. According to information. An expression affixed to cases which the reporter gives on the authority of another, as *ex relatione amici*, narrated to the reporter by a friend.

Ex rigore. In strictness; in severity.

Ex rigore juris. By the force of law; as opposed to *Ex gratia curia*.

Ex speciali gratiâ, certâ scientiâ et mero motu regis. By the special favour, certain knowledge, and mere will of the king. Words used in Royal charters.

Ex suo motu. By his own motion.

Extendi facias. That you cause to be extended or appraised at their full value. A writ of extent, directed to the sheriff for the valuing of lands and tenements and goods and chattels of a judgment debtor, to recover debts of record due to the Crown.

Extenso manerii. This was a direction for the making of a survey of buildings, lands, commons, parks, woods, &c.

Extirpatione. A judicial writ, either before or after judgement, that lay against a person who, when a verdict was found against him for land, &c., maliciously overthrew any house or extirpated any trees upon it.

Extortio est crimen quando quis colore officii extorquet quod non est debitum, vel supra debitum, vel ante tempus quod est debitum. Extortion is a crime, when, by colour of office, any person extorts that which is not due, or more than is due, or before the time when it is due.

Ex tota materiâ emergat resolutio. Let the resolution or decision arise from the whole case.

Extra. Outside; beyond; without; in addition to.

Extra causam. See *Causa*.

Extracta curia. The issues or profits of holding a Court, arising from the customary fees,

&c. Extracts of writings or records of the proceedings in a Court.

Extractum. An estreat; copy of a record or fine enrolled in Court. A true copy or duplicate of an original writing.

Extra judicium. Out of the regular course of legal procedure. See *Obiter dictum*.

Extra legem positus est civiliter mortuus. He who is placed beyond or out of the law is civilly dead.

Extra memorium hominum. Beyond human memory; perpetual.

Extraneus est subditus qui extra terram, i. e., potestatem regis natus est. A foreigner is a subject who is born out of the territory, that is Government, of the king.

Extra quatuor maria. Beyond the four seas, i. e., out of the kingdom of England.

Extra territorium. Beyond territorial jurisdiction.

Extra territorium jus dicenti impune non paretur. The sentence of one adjudicating beyond his territory, cannot be obeyed with impunity. One may safely disregard a judge administering justice beyond his own country. A sovereign or any other authority who legislates or administers justice beyond his own realm may be safely disobeyed beyond his own realm. When considered with reference to foreign communities, the jurisdiction of every court, whether *in personam* or *in rem*, must, so far as regards the compelling obedience to its decrees, necessarily be bounded by the limits of the kingdom in which it is established, and unless, by virtue of international treaties, such jurisdiction has been extended, it clearly cannot enforce process beyond those natural limits. Moreover, the laws of a state are frequently permitted, by the courtesy of another, to operate in the latter, when neither that state nor its citizens will suffer inconvenience from the application of the foreign law. This is the principle of International comity. By the comity of nations, the decrees of a country are in many instances aided by other countries in their execution (*Civ. Pro. Code XIV of 1882, ss., 229, 229A, 229B*) and certain offences (*e. g.* international piracy) are justiciable everywhere.

It is a maxim of almost every jurisprudence, that the jurisdiction of a country is limited by its territory, including in such phrase its dominions proper and also its territorial waters. See *Statuta suo...*

Semble.—The Governor General of India in Council has no power to legislate for offences committed on the high seas outside the territorial limits of British India, though he has power to legislate, in respect of offences committed on the high seas, within three miles of its coasts (*Reg. v. Kasiya Rama, 8 Bom. H. O. Cr. Ca., 63*).

The Governor-General in Council has power to make laws and regulations binding on all persons within the Indian

territories under the dominion of Her Majesty, no matter when such territories were acquired. His legislative powers are not limited to those territories which at the date when the Indian Councils Act (24 and 25 Vic. c. 67) received the royal assent (*i. e.*, 1st Aug. 1861) were under the dominion of Her Majesty (*Abdulla v. Mohan Gir*, 11 All. 490, F. B.).

Where the property, the subject matter of the suit, was not situated in British India, but in a foreign territory, *held*, that although both the parties expressed their willingness that the matter should be decided on the merits, the Court should act on the rule of law that no consent of parties can give to the Court a jurisdiction which it does not possess over the subject matter of the suit (*Government of Bombay v. Ramalsingji Amarsingji*, 9 Bom. H. C., A. C., 242).

See also *Kumarasami v. Subbaraya* (23 Mad. 314), under the maxim *Judicia officium...*

Where a foreign subject resident in a foreign territory, instigated the commission of an offence which, in consequence, was committed in British India, *held*, that the instigation not having taken place in any district created by the Code of Criminal Procedure, the instigator was not amenable to the jurisdiction of a British Court established under that Code (*Reg. v. Pirtai*, 10 Bom. H. C. A. Cr., 346). The Criminal Procedure Code does not confer jurisdiction upon a Magistrate to try the subject of a foreign state for "receiving stolen property" when the offence of receiving such property has been committed outside the British territories (*Reg. v. Bechar Mava*, 4 Bom. H. C., Cr. Ca., 38; *Queen-Empress v. Kirpal Singh*, 9 All. 523). See also *Queen-Empress v. Natwarai*, 16 Bom. 178. The accused stole property in foreign territory and was apprehended with it in his possession in a district in British territory. *Held*, that the courts of such district had no jurisdiction to try him for the theft (*Reg. v. Adwigaadu*, 1 Mad. 171).

Extravagantes communes. The general edicts.

Extra viam. Beyond or out of the way.

Extra vires. Beyond one's powers. See *Ultra vires*.

Extrepamentum. Any spoil made by a tenant upon any lands or woods to the prejudice of him in reversion. It also signifies the making land barren by continual ploughing.

Ex turpi causa non oritur actio. No right of action arises from an immoral or base cause. No contract can be supported by an immoral consideration. See *Ex dolo malo...*

Ex virtute officii. By virtue of the office. See *Ex officio*.

Ex visceribus statuti, nemo enim aliquam partem recte intelligere possit antequam iterum atque iterum perlegerit. Out of the very bowels of a Statute, for no one can rightly understand a part until he has

again and again read through the whole. See *Ex anteceden ibus... Incivile est... Benigna faciendae...*

Ex visitatione Dei. By the visitation of God. See *Vis major*.

Ex visu scriptoris. From inspection of writing.

Ex vi termini. From the force or meaning of the term or expression.

F

Facere legem. To make law.

Facinus quos inquinat aequat. Guilt makes equal those whom it stains.

Facio, ut des. I perform that you may give. See *Do ut facias*.

Facio, ut facias. I do, that you may do. See *Do ut des*.

Fac simile. Make it like. An exact copy, preserving all the marks of the original.

Facta armorum. Feats of arms, jousts, tournaments, &c.

Facta interpretatio prudentissimos fallit. On the right interpretation of a fact, the wisest may be mistaken.

Facta probantia. Proving facts.

Facta sunt potentiora verbis. Deeds are more powerful than words.

Facta tenent multa quae fieri prohibentur. Deeds contain many things which are prohibited to be done.

Facto. In fact, as where any thing is actually done. See *De facto*.

Factum. A man's own act or deed; fact or feat; anything stated and made certain.

Factum a iudice, quod ad ejus officium non spectat, non ratum est. An action of a judge which relates not to his office, is of no force.

Factum negantis nulla probatio. A negative fact is no proof.

Factum non dicitur quod non perseverat. That is not called a deed which does not continue operative.

Factum probandum. The fact, event, or thing to be proved.

Factum probans. The evidence which proves a thing.

Factum unius alteri nocere non debet. The deed of one should not hurt another. See *Res inter alios acta...*

Factum valet. See *Quod fieri non...*

Facultas probationum non est angustanda. The faculty of proof is not to be narrowed. The liberty of adducing evidence to support his case ought to be most freely conceded to every litigant. Under the Indian Evidence Act I of 1872, all persons are competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. A lunatic is not

incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him, and giving rational answers to them (s. 118). Evidence of dumb witnesses, given by signs, is also admissible under s. 119. Husbands and wives of the parties to a suit are also competent witnesses (s. 120). Restriction, however, is placed against disclosing communications made during marriage, affairs of state, official communications, or professional communications, unless with the consent of the party who is likely to be prejudiced by such disclosure (ss. 121 to 129). See chapter IX of the Act.

Fait. A deed or writing lawfully executed to bind the parties thereto.

Fait enrolle. (Fr) A deed enrolled, as a bargain and sale of freeholds.

Faitours. (Fr) Evil doers; vagabonds; idlers.

Falcatura. One day's mowing of grass; a customary service to the lord by his inferior tenants.

Falda cursus. A sheep-walk or feed for sheep.

Faldagium. A common of pasture for sheep.

Falsa causa non nocet. A false cause does not vitiate. If the motive assigned for any particular bequest or devise to any particular legatee or devisee is wholly erroneous or mistaken, that does not in general affect the bequest or devise, which accordingly remains good unless the legatee or devisee has fraudulently conducted to the mistake or error.

Falsa demonstratione legatum non peremi. Misdescription will not avoid a bequest. This is an application of the maxim *Falsa demonstratio*...to the case of legacies.

Falsa demonstratio non nocet. False description does not vitiate. See *Nihil facit*...

Falsa demonstratio non nocet cum de corpore (or persona) constat. Mere false description does not vitiate if there be sufficient certainty as to the object, or the person.

A mere inaccuracy of description will not diminish or enlarge the subject matter of a devise or bequest when that subject matter (*corpus*) is otherwise well ascertained. But of course the maxim in its very words implies that it has no application to cases in which the corpus is not ascertained, and in which the corpus must needs, therefore, be gathered either wholly or partly from the alleged inaccurate words of description; in this latter case, these alleged inaccurate words must be taken to be accurate, if there is any subject-matter to which they exactly fit, upon the maxim, *non accipi debent verba in falsum demonstratio em que competent in veram limitationem*.

Falsa demonstratio means an erroneous description of a person or a thing in a written instrument; and the maxim signifies that where the description is made up of

more than one part, and one part is true, but the other false, there, if the part which is true describe the subject with sufficient legal certainty, the untrue part will be rejected and will not vitiate the devise (*Per Lindley, M. R., Cowen v. Truefitt*, 1899, 2 Ch. D. 309; 68 L. J. Ch. 563), the characteristic of cases within the maxim being, that the description, so far as it is false, applies to no subject at all, and, so far as it is true applies to one only (*Ibid.*; *Per Alderson, B., Morrell v. Fisher*, 4 Exch. 591). If there be an adequate and sufficient description with convenient certainty of what was meant to pass, a subsequent erroneous addition will not vitiate it (*Ibid.*; *Per Parke, B., Llewellyn v. Earl of Jersey*, 11 M. & W. 189); *quicquid demonstrat rei additur satis demonstrat frustra est*.

Where the words used in a will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect. A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name (*Ind. Suc. Act X of 1865, s. 62*). See *Præsentia corporis*... But in applying the maxim that the name shall prevail against an error of demonstration, it must first be shown that there is an error of demonstration, and until you have shown that, the rule *veritas nominis tolli errorem demonstrationis* does not apply. There is no presumption in favour of the name more than of the demonstration (*Per Lord Campbell, Drake v. Drake*, 8 H. L. Cas. 179).

If the thing which a testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect (*Ind. Suc. Act X of 1865, s. 65*; *Nightingale v. Smith*, 1 Exch. 886).

The maxim applies only to cases in which the false demonstration is superadded to that which was sufficiently certain before (*Doe v. Hubbard*, 15 Q. B. 240). It can never be properly applied where there is a property which every part of the description fits, and on which every word thereof has full effect (*Webber v. Stanley*, 16 C. B.N. S. 698). Where terms can be applied so as to operate on a subject matter and limit the other terms employed in its description, or, in other words, where there is a subject matter to which they all apply—it is not possible to reject any of those terms as a *falsa demonstratio* (*Smith v. Ridgway*, L. R., 1 Exch. 332). If all the terms of the description fit some particular property, you cannot enlarge them by extrinsic evidence so as to include anything which any part of those terms does not accurately fit (*Per Lord Selbourne, Hardwick v. Hardwick*, L. R. 16 Eq. 175). If a man pass lands, describing them by particular references,

all of which references are true, the court cannot reject any one of them (*Doe v. Lyford*, 4 M. & S. 557; 16 R. R. 537).

But although an averment to take away surplusage is good, yet it is not so to increase that which is defective in the will of the testator; and it has been observed that there is a diversity where a certainty is added to a thing which is uncertain, and where to a thing certain (*Doe v. Greathed*, 8 East, 103; *Doe v. Ashley*, 10 Q. B. 663). Accordingly, where a testator devised all his freehold and real estates in the county of L., and city of L., and it appeared that he had no estates in the county of L., a small estate in the city of L. inadequate to meet the charges in the will, and estates in the county of C. not mentioned in the will, it was held that parol evidence was inadmissible to show the testator's intention that his real estates in the county of C. should pass by his will, for it was observed that this would be calling in aid extrinsic evidence to introduce into the will an intention not apparent upon the face of it, and making the will speak upon a subject on which it was altogether silent (*Miller v. Travers*, 8 Bing. 244; 34 R. R. 703).

A mortgage deed of certain bhagdari lands stated that "all the properties appertaining to the entire bhag" were thereby mortgaged to the plaintiff. The bhag comprised (*inter alia*) four gabhans (building sites). But the clause which set forth the particulars of the property mortgaged thereby specified only two gabhans, one only of which belonged to the bhag, and the other did not. The deed then proceeded "According to these particulars, lands, houses and gabhans, barn-yards, wells, tanks.....together with whatsoever may appertain to the bhag—all the properties appertaining to the whole bhag have been mortgaged and delivered into your possession. There is no other property appertaining to the said bhag of which mention is not made here." Held, that the particulars were the "leading" description and the supplementary description of them as constituting the entire bhag should be regarded as *falsa demonstratio* (*Tribhovandas v. Krishnamam*, 18 Bom. 283).

A certain piece of land described in the proclamation of sale as "survey No. 294, Pot No. 3, measuring 24½ *gunthas*" the boundaries of which was also set forth, was sold by auction in execution of a decree. The boundaries, as stated, really included another piece of land, survey No. 294, Pot No. 4, which comprised 3 acres, 2½ *gunthas*. This latter piece of land was put up for sale on the following day. Held, that the property offered for sale was sufficiently identified by the description as "Survey No. 294, Pot No. 3, containing 24½ *gunthas*," and the statement of the boundaries, so far as it was inaccurate, might be properly regarded as *falsa demonstratio* (*Mahomed Sayad Phaki v. Navroji Balabhai*, 10 Bom. 214).

A bequest was made to a person whom the testator falsely described as his "aurs" or "natural born" son. Held, that this false description, not involving any condition that the legatee should be the testator's son, did not invalidate the bequest to the designated person (*Sri Raja Rao Venkata Surya v. The Court of Wards*, 22 Mad 383; *s.c.*, *Court of Wards v. Venkate Surya*, 20 Mad. 167; distinguishing *Fanindra Deb Raikat v. Rajeswar Dass*, L. R. 12 I. A. 72; 11 Cal. 463).

A stated in his will that he had been keeping a minor as his adopted son, and recited,—in a bequest of property to him,—“Whereas my adopted son is a minor.” Held, that the expression that the testator had been keeping the minor as his adopted son meant keeping him with a view to his adoption, and that the bequest to the minor was not conditional on his having been adopted, but was effectual, whether he had been adopted or not (*Subbarayur v. Subbammal*, 24 Mad. 214).

Plaintiff sued as the widow of an adopted son for the property of the adoptive father, and also on the ground that the adopted son was the devisee of the adoptive father. The Civil Judge decided that the adoption was invalid and that the devise having been made to plaintiff's husband an adopted son was invalid. Held, that the language of the testator sufficiently indicated the person who was to be the object of his bounty, the person so indicated was entitled to take, although the testator conceived him to possess a character which in point of law cannot be sustained (*Jivani Bhai v. Jivu Bhai*, 2 Mad. H. C. R. 462).

It is also a rule in conveyancing that if an estate be granted in any premises, and that grant is express and certain, the *habendum*, though repugnant to the deed, shall not vitiate it. If, however, the estate granted in the premises be not express, but arise by implication of law, then a void *habendum*, or one differing materially from the grant, may defeat it (*Goodtitle v. Gibbs* 5 B. & C. 713; 29 R. R. 366).

Falsa orthographia, sive falsa grammatica, non vitiat concessionem. False spelling or false grammar does not vitiate a grant. See *Mala grammatica*...

Falsi crimen. See *Crimen falsi*.

Falso iudicio. A writ of false judgment, that lay to amend errors in the proceedings of an inferior court, not being a court of record.

Falsariarius. A forger.

Falso retorno brevium. A writ that lay against a sheriff, who had execution of process, for a false return to the writ.

Falsum imprisonmentum. False imprisonment.

Falsum iudicium. False judgment.

Falsus in uno falsus in omnibus. False in one thing, false in all. See *Malus in uno*...

This maxim is to be applied with great caution. For if a whole body of testimony were to be rejected because the witness was evidently speaking untruth in one or more particulars, it is to be feared that witnesses might be dispensed with. The falsehood should be considered in weighing the evidence. The true meaning of this maxim may be said to be that the testimony of a person who has once spoken an untruth must be received with caution; and that the court, in its discretion, may or may not draw any such presumption as is suggested by the maxim, according to the facts of each particular case.

As applied to witnesses, it means that where their testimony is discredited or falsified in one thing, it is discredited and falsified in whole—whereas, in point of fact, the utmost effect of the partial discredit should be to render one's judgment of the rest more severely careful. The maxim expresses a small truth in a very exaggerated form.

Fama. A rumour; report.

Fama, fides, et oculus non patiuntur ludum. Fame, faith and eye-sight do not suffer a cheat.

Familia. (Rom. L.) Signifies all the servants belonging to a particular master. Also a portion of land sufficient to maintain one family.

Familia erciscunda. (Rom. L.) An action for the partition of inheritance.

Famosi libelli. Libels on the state; scurrilous pamphlets.

Famosus libellus. An infamous libel.

Fanatio. See *Mensis fanationis*.

Fardella terræ. Fardel of land; the fourth part (according to some, the eighth part) of a yard-land.

Farinagium. Toll of meal or flour.

Fatetur facinus qui judicium fugit. He who flies judgment confesses his guilt. His flight is a tacit admission of guilt.

Futua mulier. A whore.

Fatuus, apud jurisconsultos nostros, accipitur pro non compos mentis; et fatuus dicitur, qui omnino desipit. Fatuous, among our jurisconsults, is understood of a man not of right mind; and he is called *fatuus* who is altogether foolish.

Favorabilia in lege sunt fiscus, dos, vita, libertas. Things favourably considered in law are the treasury, dower, life, liberty.

Favorabiliores rei potius, quam actores, habentur. The condition of the defendant shall be favoured rather than that of the plaintiff. See *Melior est conditio defendantis*.

Favorabiliores sunt executiones aliis processibus quibuscunque. Executions are preferred to all other processes whatever.

Favores ampliandi sunt; odia restringenda. Favours are to be enlarged, things hateful restrained.

Felix qui potuit rerum cognoscere causas. Happy is he who can apprehend the causes of things.

Felleo animo. With a felonious intent.

Felo de se. A felon of himself; a self-murderer; a suicide. It also denotes any one who commits some unlawful or malicious act in committing which he occasions his own death, *e. g.*, when unlawfully shooting at another person the gun burst and he kills himself.

Feloniam, ex vi termini, significat quodlibet capitale crimen felleo animo perpetratum. Felony, from the meaning of the term, signifies some capital crime, perpetrated with a malicious intent.

Feloniam implicatur in quolibet prodicione. Felony is implied in every treason.

Felonice. Feloniously; a word essential in indictments for felony.

Felonce cepit et asportavit. He feloniously took and carried away. The technical words in indictments for larceny; the carrying away being an essential part of the crime, though the slightest removal is sufficient.

Felonice fregit prisonam. He feloniously broke the prison.

Feme bordelier. A common whore.

Feme covert. A married woman. Also called *covert baron*.

Feme sole. (Fr.) A woman sole or alone, that is, unmarried. It also includes those who have been married, but whose marriage has been dissolved by death or divorce, and those who are judicially separated from their husbands. A woman who, although married, is in matters of property independent of her husband, is a *feme sole* as to such property.

Feme sole merchant. A married woman who by the custom of London trades on her own account, independent.

Feodi firma. Fee-farm. Fee farm rent is where an estate is granted, subject to a rent in fee of at least one-fourth of the value of the lands at the time of its reservation.

Feodum (feudum) antiquum. A feud which devolved upon a vassal from his intestate ancestor.

Feodum est quod quis tenet ex quacunque causa sive sit tenementum sive redditus. A fee is that which any one holds from whatever cause, whether tenement or rent.

Feodum (feudum) novum. A feud acquired by a vassal himself.

Feodum simplex quia feodum idem est quod hereditas, et simplex idem est quod legitimum vel purum; et sic feodum simplex idem est quod hereditas legitima vel hereditas pura. A fee-simple, so called because fee is the same as inheritance, and simple is the same as lawful or pure; and thus fee-simple is the same as a lawful inheritance, or pure inheritance.

Feodum talliatum, i. e., hereditas in quantum

certitudinem limitata. Fee-tail, *i. e.*, an inheritance limited in a definite descent.

Feoffamentum. A gift or grant of any manors, messuages, lands or tenements, to another in fee, to him and his heirs for ever, by the delivery of seisin and possession of the thing given or granted. This is the most ancient conveyance of lands. Fees were given to knights under the phrases *de veteri feoffamento* and *de novo feoffamento*; the former were such lands as were granted by Henry I., and the latter, granted after the death of the said King, since the beginning of the reign of Henry II.

Fera bestia. Wild beasts.

Fera campestris. Beasts of chase. They are five, *viz.*, the buck, doe, fox, marten and roe.

Fera igitur bestia et volucres et pisces, id est omnia animalia quæ mari, celo et terra nascuntur, simul atque ab aliquo capta fuerint jure gentium statim illius esse incipiunt. Wild beasts, birds, fishes, and all animals, either in the sea, the air, or on the earth, so soon as they are taken by any one, immediately become by the laws of nations the property of the captor.

There is no absolute property in wild animals or game, fit for food or otherwise profitable, until reclaimed or captured. As long as such an animal remains on a man's land, he has a qualified interest which is lost when it leaves the land, though it be hunted off it. But if a man trespasses on the land of another, and there captures such an animal, the property at once vests in the owner of the land, who may take it (*Blades v. Higgs*, 11 Jur. N. S. 701; *Reg. v. Read*, 3 Q. B. D. 131). Larceny cannot be committed of animals *fera natura*, unreclaimed (*Reg. v. Shickle*, L. R. 1 C. C. 158, following *Reg. v. Cory*, 10 Cox. C. C. 23).

A wild elephant having fallen into a pit made by K. N. in his own land, was secured, removed, and trained by V. M. without the leave of K. N. *Held*, that K. N. was the captor, and that V. M. acquired no property in the elephant (*Makath Unni Moyi v. Malabar Kandapurnni*, 4 Mad. 268).

A tame female elephant escaped from her master's field in company with a heard of wild elephants, and resumed her natural wild habits. The owner (plaintiff) abandoned his search after two months and then offered a reward of Rs. 200 to any person who should recapture her. At the end of four months she was recaptured by the defendant, who was compelled to tame her in the same way as if she had been an ordinary wild elephant. Plaintiff offered Rs. 200 to the defendant and demanded the elephant, but the demand was refused. *Held*, that under the circumstances, the plaintiff had lost all claim to the animal (*Peal v. Campbell*, 3 C. L. R. 515).

Although animals *fera natura* are not subjects of property, yet under certain circumstances a man may be invested with a qualified or special property in them either

(1) *per industriam*, (2) *propter impotentiam*, or (3) *propter privilegium*. See these titles.

See *Qui prior est tempore*...

Fera natura. Wild beasts and birds. See *Domitæ*...

Festinatio justitiæ est novæ infortunii. Hasty justice is the step-mother of misfortune.

Festinum remedium. Prompt redress.

Feudum, Feodum. A feud or fee.

Feudum expectativum. Fee-expectant, *i. e.*, where lands are given to a man and his wife, and the heirs of their bodies.

Feudum laicum. A lay-fee, or land held in fee of a lay-lord, as opposed to such a tenure as frankalmoin, in which the service is of a spiritual nature.

Feudum (feodum) militis (or militare). A knight's fee.

Feudum novum ut antiquum. A feudum novum, or newly acquired fee, granted to a man ut feudum antiquum: *i. e.*, with all the qualities annexed to a feud derived from one's ancestors, so as to admit the succession of collateral relations of the purchaser.

Feudum simplex. Fee-simple. A lawful or pure inheritance. See *Feodum simplex*...

Fiat. Let it be done. A short order or warrant of some judge for making out and allowing certain processes, &c.

Fiat confirmatio. Let the confirmation be made or take place. An order confirming an appointment.

Fiat jus, ruat justitia. Let law prevail, though justice fail.

Fiat justitia. Let justice be done. On a petition to the king for his warrant to bring a writ of error in parliament, he writes on the top of the petition, *fiat justitia*, and then the writ of error is made out.

Fiat justitia ruat cælum. Let justice be done, though the heavens should fall. Though ruin should ensue, let justice take its course. Judges must not shrink from doing their duty, and they are bound to pass a capital sentence in a case of murder when they believe the evidence (*Queen v. Sibnarain Palodhee*, 7 W. R. Cr. 33.)

Fiat prout fieri consuevit, nil temere novandum. Let it be done even as it is accustomed to be done, let nothing be innovated rashly.

Fictio cedit veritati. Fiction yields to truth.

Fictio juris. Fiction of law. A supposition of law, that a thing is true, without inquiring whether it be so or not, that it may have the effect of truth so far as it is consistent with equity.

Fictio juris non est ubi veritas. Fiction of law does not exist where there is truth.

Fictio legis iniquè operatur alicui damnum vel injuriam. A fiction of law does not properly work loss or injury. See *In fitione juris*...

Fictio legis neminem lædit nemini operatur damnum vel injuriam. A fiction of law in-

jures no one, works damage or injury to no one. Fictions are only to be made for necessity and to avoid mischief, and must never be allowed to work prejudice or injury to an innocent party. A legal fiction will not be raised so as to operate to the detriment of any person, as in destruction of a lawful vested estate. The law does not love that rights should be destroyed, but, on the contrary, for the supporting of them invests notions and fictions, and the maxim *in fictione juris subsistit æquitas* is often applied by courts for the attainment of substantial justice and to prevent the failure of right.

Fidei commissum. (*Rom. L.*) A testamentary trust.

Fidei defensor. Defender of the faith. A peculiar title belonging to the kings of England, first conferred by Pope Leo the Tenth on Henry VIII for writing against Martin Luther.

Fide-jussor. (*Rom. L.*) A surety, whose heirs were bound.

Fide-jussoria. Binding oneself with sureties to perform an act.

Fidelitas. Fealty.

Fidem mentiri. This is when a tenant does not keep the fidelity which he has sworn to the lord.

Fideo ero verè domino vere meo. I will be truly faithful to my true lord.

Fides est obligatio conscientie alicujus ad intentionem alterius. A trust is an obligation of conscience of one to the will of another.

Fiducia. (*Rom. L.*) If a man transferred his property to another, on condition that it should be returned to him, this contract was called *fiducia*, and the person to whom the property was so transferred was said *fiducium accipere*.

Fiduciarus. A trustee; one who holds anything in trust.

Fieri feci. I have caused to be made. A return made by a sheriff when he has executed a writ of execution.

Fieri facias. That you cause to be made. A judicial writ of execution, that lies where judgment is had for debt or damages recovered in the king's courts; by which writ the sheriff is commanded to levy the debt and damages of the goods and chattels of the defendant, the words of the writ being, *quod fieri facias de bonis et catallis, &c.* Abbrev. *fi fa.* It is opposed to a *levari facias*, which affects the profits of a man's land as well as his goods; to an *elegit*, which affects lands and goods; and to a *capias ad satisfaciendum*, which is directed against the person. There may be a *testatum fieri facias* into another county, if the defendant has not goods enough in the county where the action is laid to satisfy the execution.

Fieri facias de bonis ecclesiasticis. That you cause to be made of the ecclesiastical goods,

A writ of execution addressed to the bishop against the ecclesiastical goods and chattels of the defendant, who is a beneficed clerk.

Fieri non debuit, sed factum valet. It ought not to have been done, but being done it is binding; e. g., a marriage without proper consent. But this doctrine of *factum valet* will not render valid acts which are void *ab initio*. See *Quod fieri non...*

Filacium. A file.

File du mer. The high tide of the sea.

Filiatio non potest probari. Filiation cannot be proved.

Filius est pars patris. A son is part of his father.

Filius-familias. In Roman Law, a son or child whether born in lawful wedlock or adopted.

Filius in utero matris est pars viscerum matris. A son in the mother's womb is part of the mother's vitals.

Filius mulieratus. The eldest legitimate son of a woman who was illicitly connected with his father before marriage. This is the same as *mulier puisne*. See *Bastard eigne*.

Filius nullius. See *Nullius filius*.

Filius populi. A son of the people. A natural child; a bastard.

Filum aquæ medium. The thread or middle of the stream, where a river parts two estates, &c.

Filum viæ. The thread or middle of a road. See *Mobaruck Shah v. Toofany* (4 Cal. 206; 2 C. L. R. 445).

Fine annullando levato de tenemento quod fuit de antiquo dominio. An abolished writ for disannulling a fine levied of lands in ancient demesne to the prejudice of the lord.

Fine capiendo pro terris, &c. An obsolete writ which lay for a person who upon conviction by jury had his goods taken, and his body imprisoned, to be remitted his imprisonment, and have his lands and goods re-delivered to him, on obtaining favour of a sum of money, &c.

Fine non capiendo pro pulchre placitando. An obsolete writ to inhibit officers of court to take fines for fair pleading.

Fine pro redisseisina capienda. A writ that lay for the release of one imprisoned for a redisseisin, on payment of a reasonable fine.

Fines le Roy. Fines payable to the king.

Finire. To fine, or pay a fine upon composition and making satisfaction. The same as *finem facere*.

Finis communis. Common fine. A small sum of money, otherwise called *head silver*, which the persons resident within the jurisdiction of certain court-leet, paid to the lord, towards the charge of his purchase of the court-leet.

Finis finem litibus imponit. A fine puts an end to litigations.

Finis rei attendus est. The end of a thing is to be attended to.

Finis unius diei est principium alterius. The end of one day is the beginning of another.

Finitio. Death.

Finium regundorum. (*Rom. L.*) An action to determine the boundaries of adjacent lands.

Firma. Victuals or provisions. Also rent, &c.

Firma alba. See *Alba firma*.

Firma noctis. A custom or tribute anciently paid towards the entertainment of the king for one night.

Firmatio. Doe season, as opposed to *buck* season. Also a supplying with food.

Firmior et potentior est operatio legis quam dispositio hominis. The operation of the law is firmer and more powerful than the disposition of man. Consequently, the right of survivorship in joint tenancy prevails over the devise by either joint tenant of his individual share. In the same manner a man having granted a lease for years, cannot overthrow this grant by any surrender of his interests.

The law in some cases overrides the will of the individual, and renders ineffective and futile his expressed intention or contract. For instance, a man cannot, by his own acts or words, render that irrevocable which in its own nature and according to established rules of law, is revocable. See *Modus et conventio*...

Fiscus. The treasury of a prince or state.

Flagraante bello. While the war is raging, or going on. During hostilities.

Flagrante delicto (or *crimine*). In the very act of committing the crime.

Flota navium. A fleet of ships.

Flumina et portus publica sunt, ideoque jus piscandi omnibus commune est. Rivers and ports are public, therefore the right of fishing is common to all.

Fœdus. A league or compact.

Fœminæ non sunt capaces de publicis officiis. Females are not admissible to public offices.

Fœmina viro co-operta. A woman joined to her husband; *i. e.*, a married woman.

Fœneratio. Usury; the gain of interest; the practice of increasing money by lending.

Fœnus nauticum. Nautical usury. A contract for the repayment of money borrowed, not on the ship or goods only, but on the mere hazard of the voyage itself, with a condition to be repaid with extraordinary interest; as for example, bottomry. Sometimes called *usura maritima*.

Fœx populi. The dregs of the people; contemptuously applied to the lower classes.

Foribus apertis. With open doors; in public court.

Forinsecum manerium. The manor as to that part of it which lies without the town, and not included within the liberties of it.

Forinsecum servitium. The payment of extraordinary aid; as opposed to *intrinsicum*

servitium, which was the common and ordinary duties, within the lord's court.

Forinsecus. Outward, or on the outside. Outlawed.

Fori rei judicata. Of the court which decided the cause.

Forisbanitus. Banished.

Forisfacere, i. e., extra legem seu consuetudinem facere. Forisfacere, *i. e.*, to do something beyond law or custom.

Forisfactura. Forfeiture.

Forisfactura maritaglii. Forfeiture of marriage. A writ that anciently lay against him, who holding by knight's service, and being under age, and unmarried, refused her whom the lord offered him without his disparagement, and married another.

Forisfactus. A forfeit.

Forisfamiliari. When a person accepts of his father's part of lands, in the life-time of the father, and is contented with it, he is said *forisfamiliari*, to be discharged from the family, and cannot claim any more. One separated from the family of his father.

Forisjudicatio. A forejudger; a judgment whereby a person is deprived of the thing or right in question.

Forma legalis forma essentialis. Legal form is essential form. When the law requires a thing to be done in a particular form, it must be done in that form and not otherwise, in order to be effective in law.

Forma non observata inferitur annullatio actus. Form not being observed, a nullity of the act is inferred.

Forma pauperis. See *In forma*...

Formedon. Breve de formâ donationis. An abolished writ that lay for him who had right to lands or tenements by virtue of any entail. *Formedon in descender* lay where a gift in tail was made, and the tenant in tail aliened the land entailed, or was disseised of them, and died. The heir in tail then had this writ of *formedon* in the descender to recover the lands.

Formula. Forms of law.

Foro conscientia. In the tribunal of conscience.

Forstellarius est pauperum depressor et totius communitatis et patriæ publicus inimicus. A forestaller is an oppressor of the poor, and a public enemy of the whole community and country.

Fortia. Power; dominion; jurisdiction.

Fortior est custodia legis quam hominis. The custody of the law is stronger than that of man.

Fortior et æquior est dispositio legis quam hominis. The disposition of the law is stronger and more just than that of man. See *Firmior et...*

Fortior et potentior est dispositio legis quam hominis. The disposition of law is stronger and more powerful than that of man. See *Firmior et...*

Fortiori. With greater or stronger reason.

Fortunam faciunt judicem. They make fortune a judge.

Forum. The court to the jurisdiction of which a party is liable.

Forum competentis. A competent court; a court having jurisdiction over the suit.

Forum incompetentis. A court not having jurisdiction over the suit.

Forum originis. The court of the country of a man's domicile by birth.

Forum rei. The court of the defendant. See *Actor sequitur*...

Fractionem diei non recipit lex. The law does not regard the fraction of a day. When, therefore, a thing is to be done upon a particular day, all that day is allowed to do it in. An Act of Legislature becomes law as soon as the day on which it is passed commences, unless the commencement be expressly postponed. In computing the age of a person, the day of his birth is included as a whole day and every minor shall be deemed to have attained majority at the beginning of the eighteenth or twenty first anniversary, as the case may be, of his birth-day, and may act as of full age the first moment of that day (*Ind. Majority Act IX of 1875, s. 4*).

Courts of justice will not take notice of the fraction of a day, except in cases where there are conflicting rights as between subject and subject for the determination of which it is necessary that they should do so; as for instance, in a claim for demurrage of a ship, in which case it has been expressly held, that a fraction of a day counts for a day (*Commercial S. S. Co. v. Boulton, L. R. 10 Q. B. 846*).

An official assignee having been appointed to a bankrupt's estate, later on the day of his appointment an extent issued at the suit of the Crown against the bankrupt for a Crown debt, and the question was which should have priority. *Held*, that where the title of the Crown and of the subject accrue on the same day, the king's title shall be preferred. The seizure under the extent, therefore, was upheld, and the title of the official assignee was ignored (*Reg. v. Edwards, 9 Exch. 32*). The decision may however be supported on another principle, *viz.*, that whether between the Crown and a subject, or between subject and subject, judicial proceedings are to be considered as having taken place at the earliest period of the day on which they are done (*Wright v. Mills, 4 H. & N. 491; Evans v. Jones, 3 H. & C. 423*). See *Quando jus domini*...

Under the earlier Registration Acts (I & XIX of 1843) registered documents operated from the date of registration, when, in the case of documents registered on the same day, priority of registration could be shown by the numbers or the like. But under the subsequent Registration Acts, the registration of a document relates back to the date of its execution (*Act III of 1877, s. 47*).

In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded (*Ind. Lim. Act XIV of 1877, s. 12*).

See also s. 9 of the General Clauses Act X of 1897.

Fractura navium. Wreck of shipping at sea.

Franci plegium. Frank-pledge. A pledge or surety for the behaviour of freemen, it being the ancient custom of England, that every free born man at the age of fourteen should give security for his truth towards the king and his subjects.

Francus bancus. Free-bench. That estate in copy-hold lands which the wife hath on the death of her husband for her dower, according to the custom of the manor; but it is said the wife ought to be espoused as a virgin and is to hold the land only so long as she lives sole and continent. Also called *Sedes libera*.

Frangenti fidem, fides frangatur eidem. Let faith be broken with him who breaketh faith. See *Fraus meretur*...

Frater consanguineus. A brother by the father's side.

Frater fratri uterino non succedet in hereditate paternâ. A brother shall not succeed a uterine brother in the paternal inheritance. This maxim is now superseded, and even half blood relations are admitted to inheritance by 3 & 4 Wm. IV, c. 106, s. 9.

Frateria, Fraternia. A fraternity; brotherhood.

Frater nutricius. A bastard brother.

Frater uterinus. A uterine brother; a brother by the mother's side. See *Consanguineus frater*.

Fratres conjurati. Sworn brothers or companions; sometimes those were so called who were sworn to defend the king against his enemies.

Fratres jurati. Sworn brothers. Persons who by mutual oath covenanted to share each other's fortune. Such engagements were usually made in time of war when the parties went in any expedition to invade and conquer an enemy's country.

Fratriagium. A younger brother's inheritance; whatever the sons or brothers possess of the estate of the father, they enjoy it *ratione fratriagii* (by reason of brotherhood) and are to do homage to the elder brother for it, who is bound to do homage for all to the superior lord.

Fraudis interpretatio semper in jure civili non ex eventu duntaxat sed ex consilio quoque desideratur. An inference of fraud is always drawn in law not from the event alone, but likewise from the intention.

Fraudulosa occultatis. Fraudulent concealment.

Fraus dans locum contractui. A misrepresentation or concealment of some fact that is material to the contract, and had the truth regarding which been known, the contract would not have been made, as

made, is called a fraud *dans locum contractui*, i.e., a fraud occasioning the contract, or giving place or occasion for the contract.

Fraus est celare fraudem. It is fraud to conceal fraud. See *Dolus circuitu*...

Fraus est odiosa et non præsumenda. Fraud is odious and not to be presumed. Presumption is always in favour of innocence. See *In dubio prodote*... It is therefore a general rule in criminal cases that the accused must be presumed to be innocent until proved to be guilty.

It is a universal principle that every transaction in the first instance is assumed to be valid, and the proof of fraud lies upon the person by whom it is imputed (*Per Parke, B., 8 Exch. 400; per Lord Kenyon, 2 T. R. 711*). See *Ubi quid generaliter... Omnia præsuntur*...

Fraus et dolus nemini patrocinari debent. Fraud and deceit ought not to benefit any person. See *Nullus commodum... Ex dolo malo*...

Fraus et jus nunquam cohabitunt. Fraud and justice never dwell together.

Fraus latet in generalibus. Fraud lies hid in general expressions.

Fraus legis. Fraud of law; using legal proceedings with a felonious purpose.

Fraus meretur fraudem. Fraud merits fraud. See *Frangenti*...

Fraus omnia vitiat et corrumpit. Fraud vitiates and corrupts every thing. See *Ex dolo malo*...

Frequentia actus multum operatur. The frequency of an act operates much.

Fribusculum. A temporary separation between husband and wife.

Fructus augent hereditatum. Fruits (i.e., the yearly increase) enhance an inheritance.

Fructus industriales. Emblements, or growing crops of the soil.

Fructus pendentes. Fruits hanging to the stem.

Frusca terræ. Waste and desert lands.

Frustra est potentia quæ nunquam venit in actum. The power which never comes into act is in vain.

Frustra expectatur eventus cujus effectus nullus sequitur. An event is vainly expected from which no effect follows.

Frustra feruntur leges nisi subditis et obedientibus. Laws are made in vain unless to those subject and obedient.

Frustra fit per plura, quod fieri potest per pauciora. That is needlessly done by many (words) that can be done by few.

Frustra legis auxilium quaerit qui in legem committit. Vainly does he seek the help of law, who offends against law. See *Nullus commodum*...

Frustra petis quod statim alteri reddere cogaris. Vainly you seek that which you will be immediately forced to surrender to another.

Frustrâ probatur quod probatum non relevat. That is vainly proved, which being proved, is not relevant to, or would not aid, the matter in dispute.

Frustrum terræ. A small piece or parcel of land.

Fugam fecit. He has made an escape; said to a person who is found by inquisition to have fled for felony, &c., upon which forfeiture of goods took place. Now obsolete.

Fugatio. A privilege to hunt. Also flight.

Fullam aquæ. A stream or stream of water, such as comes from a mill.

Fructus officio. Having discharged a duty; one whose duty has ceased; one who having discharged his duty has terminated his authority or appointment.

Fundi appellatione adificium et ager continentur. Under the term "*fundus*" buildings and lands are comprised.

Fundi patrimoniales. Lands of inheritance.

Fundus. Land. See *Appellatione fundi*...

Fundus cum instrumento. Land with the working tools belonging to it.

Fundus instructus. Land properly furnished.

Fundus maris. Sea-land; land under the sea.

Fungibiles res. Things or goods of such a nature as that they could be replaced by equal quantities and qualities of the like kind, because they represent and replace each other, as a bushel of wheat. A particular horse jewel or painting would not be *fungibiles res*. See *Mutuum. Non fungibiles*.

Furandi animus. An intention of stealing.

Furcam et flagellum. The gallows and whip. The meanest of all servile tenures when the bondman was at his lord's disposal both life and limb.

Furoas et fossa. The gallows and the pit. In ancient privileges it signified a jurisdiction of punishing felons, that is, men by hanging, women by drowning.

Furiosis nulla voluntas est. A mad man has no will. See *Actus non facit... Consensus, non concubitus*...

Furiosus absentis loco est. A furious man is like a man who is absent.

Furiosus furore suo punitur. A madman or lunatic is punished by his own madness. If a madman commits an offence, he shall not suffer for the act, because, being deprived of memory and understanding by the hand of God, he is regarded as having broken the mere words of the law, but not the law itself.

Furiosus solo furore punitur. A madman is punished by his madness alone. He is incapable of doing any thing in law.

Furiosus stipulare non potest nec aliquid negotium agere, qui non intelligit quid agit. A madman who knows not what he does can not make a bargain, nor transact any business. Every person is competent to contract who is of the age of majority, and who is of sound mind and who is not dis-

qualified from contracting by any law to which he is subject. A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it, and of forming a rational judgment as to its effect upon his interests. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind (*Ind. Con. Act IX of 1872, ss. 11 and 12*). See also s. 68 of the Act.

Furtum. Theft or robbery of any kind. A fraudulent dealing with or user of another person's property without the consent of the latter.

Furtum est contractatio rei alienae fraudulenta, cum animo furandi, invito illo domino cuius res illa fuerat. Theft is the fraudulent handling of another's property with an intention of stealing, against the will of the proprietor, whose property it was. See s. 378 of the Indian Penal Code XLV of 1860.

Furtum non est ubi initium habet detentionis per dominum rei. There is no theft where the commencement of the detention arises through the ownership of the thing. It is no theft where the property alleged to have been stolen came into the hands of the person rightfully in the first instance, and without an *animus furandi*, though it were afterwards wrongfully appropriated by him (*Reg. v. Thistle, 1 Den. C.C. 502*).

Furtum sine affectu furandi non committitur. Theft is not committed without an intention or inclination of stealing.

G.

Gabulus denariorum. Rent paid in money.

Gager de deliverance. To wage deliverance, i. e., to give surety or pledge for the delivery of cattle or other goods illegally distrained and removed out of the jurisdiction. The ordinary remedy in such cases was by *withernam* (reciprocal distress of the goods of the wrong-doer), but if the latter was sued and appeared, he was allowed to *gage deliverance* instead. See *capias ad withernam*.

Gager de ley. Wager of law. See *Vadiatio legis*.

Garbales decimæ. Tiths of corn.

Generale dictum generaliter est interpretandum. A general saying is to be interpreted generally.

Generale nihil certum implicat. A general expression implies nothing certain.

Generalia præcedunt; specialia sequuntur. Things general precede; things special follow.

Generalia specialibus non derogant. General words do not derogate from special. Where there are general words in a later Act capa-

ble of reasonable application without being extended to subjects specially dealt with by earlier legislation, then, in the absence of an indication of a particular intention to that effect, the presumption is that the general words were not intended to repeal the earlier and special legislation (*Per Lord Selbourne, Seward v. Vera Cruz, 10 App. Cas. 68, citing Hawkins v. Gathercole, 6 D. M. & G. 1*) or to take away a particular privilege of a particular class of persons (*Per Lord Blackburn, Garnett v. Bradley, 3 App. Cas. 969*). The law will not allow the exposition to revoke or alter by construction of general words any particular statute, where the words may have their proper operation without it (*Lyn v. Wynn, Bridgman's Judgments, 122, 127*). See *Leges posteriores... Generalis clausula*.

Generalia sunt præpondenda specialibus. Things general are to be placed before things particular.

Generalia verba sunt generaliter intelligenda. General words are to be understood generally. See *Verba generalia*...

Generalibus specialia derogant. Things special derogate from things general.

Generalis clausula non porrigitur ad ea quæ antea specialiter sunt comprehensa. A general clause does not extend to those things which are before specially provided. A special law derogates from a general law. So held, by the Madras High Court, that the jurisdiction conferred on Magistrates in the Madras Presidency by Mad. Act III of 1865 was not ousted by the Schedules to the Code of Criminal Procedure (*Pro., June, 4, 1872, 7 Mad. H. C. R., Ap., 6*).

Generalis regula generaliter est intelligenda. A general rule is to be understood in its general sense.

Generaliter cum de fraude disputatur non quid habeat actor sed quid per adversarium habere non potuerit considerandum est. In questions of fraud not only is the debt due to the plaintiff, but the benefit, which but for his adversary he would have possessed, is to be taken into consideration. See the *Ind. Con. Act IX of 1872, s. 73*.

Generosi filius. The son of a gentleman. Abrev. *Gen. fil.*

Gentilis homo. A gentleman.

Gestio pro hærede. (*Sc. L.*) Behaviour as heir. That conduct by which the heir renders himself, liable to the debts of the ancestor, as by taking possession of the title-deeds, receiving rent, &c. See *Additio hæreditatis*.

Gestu et fama. Behaviour and fame. An ancient writ whereby a person's good behaviour was impeached. Now obsolete.

Gifta aqua. The stream of water to a mill.

Gilda mercatoria. A guild of merchants; a mercantile meeting or assembly.

Git. The ground; the foundation.

Glebæ ascriptitii. Assigned to the land. Villein-socmen, who could not be removed

from the land while they did the service. due.

Glossa viperina est quæ corrodit viscera textus. It is a poisonous gloss which corrupts the essence of the text.

Gradatim. By degrees; by little and little; gradually.

Gradus. A grade; step or degree.

Gradus parentela. A pedigree; a table of relationship.

Grammatica falsa non vitiat chartam. False grammar does not vitiate a deed.

Grand cape. See *Cape*.

Grand coustumier. The great book of customs.

Gratis. For nothing; without reward.

Gratis dictum. A free or voluntary statement. See *Obiter dictum*.

Gravare et Gravatio. An accusation or impeachment.

Grave delictum. A serious offence.

Gravius est divinam quam temporalem ledere majestatem. It is more serious to hurt divine than temporal majesty or power.

Grossus. Gross; absolute; entire. A thing in gross exists in its own right, and not as an appendage to another thing.

Guardianus. A guardian. One who has the charge or custody of any person or thing. A guardian is either *legitimus* (lawful, i. e., father or mother), *testamentarius* (testamentary, i. e., appointed by will), *datus* (appointed by the father in his lifetime), or *custumarius* (by custom, i. e., of orphans by the custom of the place, and in copyhold manors, by the custom, the guardianship may belong to the lord of the manor to be guardian himself or to appoint one).

H

Habeas corpora juratorum. That you have the bodies of the jurors. A writ to compel the attendance of a jury, or so many of them as refused to come upon a venire facias, issued out of the court of the Common Pleas. The practice was similar to the distringas from the Queen's Bench for the same purpose. Now obsolete.

Habeas corpus. That you have the body. This is the most celebrated writ in the English Law, being the great remedy which the law has provided for the violation of personal liberty, as by illegal imprisonment, &c. See the Code of Crim. Pro. V of 1898, s. 491. There are various kinds of this writ for which see the following titles.

Habeas corpus ad deliberandum. That you have the body to be tried in the proper jurisdiction wherein the fact was committed.

Habeas corpus ad faciendum et recipiendum. That you have the body to do and receive. This writ issued in civil cases when a person was sued in some inferior jurisdiction,

and was desirous to remove the action into the superior court, commanding the inferior judges to produce the body of the defendant together with the day and cause of his caption and detainer; whence the writ was frequently denominated an *habeas corpus cum causa*, to do and receive whatsoever the king's court shall consider in this behalf.

Habeas corpus ad prosequendum. You are to bring up the body for the purpose of prosecuting. Used when it was necessary to remove a prisoner in order that he may be tried in the proper jurisdiction.

Habeas corpus ad respondendum. That you have the body to answer. This lay when a man had a cause of action against one, who was confined by the process of some inferior Court, in order to remove the prisoner and charge him with this new action in the Court above.

Habeas corpus ad satisfaciendum. That you have the body to satisfy. This writ was used when a prisoner had judgment against him in an action, and the plaintiff desired to bring him up to some superior Court to charge him with process of execution.

Habeas corpus ad subjiciendum. That you have the body to submit or answer. This was a great and efficacious writ in all manner of illegal confinement, directed to the person detaining another, and commanding him to produce the body of the prisoner with the day and cause of his caption and detention *ad faciendum, subjiciendum et recipiendum*, to do, submit to, and receive, whatsoever the judge or court awarding such writ shall consider in that behalf.

Habeas corpus ad testificandum. That you have the body to testify. Used when it was necessary to produce the prisoner to bear testimony.

Habeas corpus cum causa. That you have the body with the cause.

Habemus confitentem reum. We have before us an accused person who confesses the whole charge.

Habemus optimum testem confitentem reum. The plea of guilty by the party accused, is the best evidence. The admission of an accused person is the best evidence. See *Confessio facta*... The term *admission* is usually applied to civil transactions. Admissions are relevant and may be proved as against the person who makes them or his representative in interest (*Ind. Evi. Act I of 1872, s. 21*). Oral admissions as to the contents of a document are not relevant unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document (*Ibid., s. 22*). In civil cases no admission is relevant if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the court can infer that the parties agreed together that evidence of it should not be given (*Ibid., s. 23*). Admissions are not conclusive proof of the matters admitted

but they may operate as estoppels (*Ibid.* s. 31).

Habendum. To have; that part of a deed which limits and defines the interest granted thereby.

Habere cognitionem placitorum. To have cognizance of pleas.

Habere facias possessionem. That you cause to have possession. A judicial writ that lay where one had recovered a term for years in action of *ejectione firmæ*, to put him into possession.

Habere facias seisinam. That you cause to have possession. A writ directed to the sheriff, to give seisin of a freehold estate recovered in the king's courts, by *ejectione firmæ* or other action.

Habere facias visum. That you cause to have view. A writ that lay in divers cases in real actions, where a view was required to be taken of the lands in controversy.

Habere licere. (*Rom. L.*) To have permission. This denoted the permitting a purchaser of property to have the possession and enjoyment thereof. It corresponds to the "quiet enjoyment" of English Law.

Habiles ad matrimonium. Fit for marriage.

Habitatio. (*Rom. L.*) The right of using a house as a dwelling house only. It differed from a *jus utendi*, as it could not be extinguished by a non-user.

Habuit. He had; he possessed.

Hæc est finalis concordia. This is the final agreement.

Hæc verba. These words.

Hærede abducto. A writ that anciently lay for the lord, who having by right the wardship of his tenant under age, could not come by his body, the same being carried away by another person.

Hærede deliberando alteri, qui habet custodiam terræ. An ancient writ directed to the sheriff, requiring him to command one who had taken away an heir under age to deliver him up to the lawful guardian of his person and estate.

Hæredem Deus facit, non homo. God makes the heir, not man. See *Deus solus... Solus Deus...*

Hærede raptio. An ancient writ that lay for the ravishment of the lord's ward. See *Ravishment de garde.*

Hæredes. (*Rom. L.*) Heirs; heiresses.

Hæredes legitimi. (*Rom. L.*) Lawful heirs. Successors by strict law where the deceased died intestate.

Hæredes maritentur absque disparagatione. Heirs are to be married without disparagement.

Hæredes proximæ. (*Rom. L.*) The children or descendants of a deceased person; near heirs.

Hæredes remotiores. (*Rom. L.*) Kinsmen of a dead person other than children or descendants; remote heirs.

Hæredes scripti. (*Rom. L.*) Heirs by devise; devisees.

Hæredes successoresque, sui cuique liberi, et nullum testamentum: si liberi non sunt, proximus gradus in possessione, fratres, patrum avunculi. The children of every man are his heirs and successors, without testament; if there be no children the next of kin, as brothers, paternal or maternal uncles, succeed in the possession.

Hæreditas, alia corporalis, alia incorporalis; corporalis est, quæ tangi potest et videri; incorporalis, quæ tangi non potest nec videri. An inheritance is either corporal or incorporeal; corporal is that which can be touched and seen; incorporeal, that which can neither be touched nor seen.

Hæreditas damnosa. See *Damnosa...*

Hæreditas jacens. Hæreditatem jacentem. (*Rom. L.*) An estate in abeyance. An estate to which the title has not been completed in the person of the heir.

Hæreditas (nihil aliud) est (quam) successio in universum jus quod defunctus habuerat. Inheritance is (nothing else than) the succession to every right which the deceased had.

Hæreditas nunquam ascendit. An inheritance never ascends. This maxim of feudal law, which went on the assumption that every estate must have descended through the direct line to the last holder, was exploded by the Act regulating the law of inheritance, 3 & 4 Wm. IV, c. 106, s. 6. So also, under the Hindu Law, inheritance descends as well as ascends; father grandfather and other lineal ancestors are reckoned among heirs in the absence of other near relations. Under the Mahomedan Law inheritance partly descends and partly ascends at the same time; the parents of the deceased taking their share along with his children.

Hæredum appellatione veniunt hæredes hæredum in infinitum. Under the term "heirs" come the heirs of heirs, to infinity.

Hæres est alter ipso, et filius est pars patris. An heir is a second self, and a son is a part of his father.

Hæres est aut jure proprietatis aut jure representationis. An heir is so by right of property, or by right of representation.

Hæres est nomen collectivum. Heir is a collective name.

Hæres est nomen juris, filius est nomen nature. Heir is a name of law; son is a name of nature.

Hæres factus. (*Rom. L.*) An heir appointed; an heir by devise; a devisee.

Hæres fidei commissarius. A beneficiary.

Hæres fiduciarius. A trustee.

Hæres hæredis mei est meus hæres. The heir of my heir is my heir.

Hæresis. Heresy; an apostacy from the established religion; it also included witchcraft.

Hæres jure representationis. An heir by right of representation. See *Capita*.

Hæres legitimus est quem nuptiæ demonstrant. He is the lawful heir whom the marriage declares or proves to be so. See *Pater est*...

The word "heir" in legal understanding signifies him to whom lands, &c., by the act of God and right of blood, descend, for *Deus solus hæredem facere potest, non homo*, and he only is heir who is *ex justis nuptiis procreatus*. It is therefore a rule that the son must be *hæres legitimus*.

Under the Hindu Law, an illegitimate son has a right of inheritance among the Sudras, and a right to receive maintenance among the Brahmans, Kshatryas or Vysias. The Mehomedan Law holds illegitimate children to be entitled to inheritance from their mother only.

In order that land in England may descend from father to son, the son must have been born after actual marriage between father and mother; and this is a rule *juris positivi*, having been framed for the direct purpose of excluding, in the descent of land in England, the application of the rule of the Civil and Cannon law, *pater est quem nuptiæ demonstrant*, by which the subsequent marriage between the father and mother was held to make the son born before marriage legitimate; and this rule of descent, being a rule of positive law, annexed to the land itself, cannot be broken in or disturbed by the law of the country where the claimant was born. Accordingly it was held in *Doe v. Vardill* (2 Cl. & Fin. 571; 1 Scott, N. R. 828) that a person born in Scotland of parents domiciled there, but not married till after his birth, though legitimate by the law of Scotland, could not take real estate in England as heir to his father who died intestate. If, moreover, the parent be incapable of inheriting land himself, he has no inheritable blood in him which he can transmit to his child, according to the maxim and old acknowledged rule of descent, *qui doit inheriter al pere doit inheriter al fits*; and, therefore, if in the above case the son had died, leaving a child, before the intestate, such child could not, according to English law, have inherited under the circumstances.

The English Law, though not so strict as to require that the child should be begotten, yet makes it an indispensable condition to make it legitimate that it should be born, after the lawful wedlock. As all children born before matrimony are bastards, so are all children born so long after the death of the husband that by the usual course of gestation they could not be begotten by him (*Alsop v. Bowtrell*, Cro. Jac. 541). See the Ind. Evi. Act I of 1872, s 112.

See *Qui ex damnato*...

Hæres minor uno et viginti annis non respondit, nisi in casu dotis. An heir under

twenty-one years of age is not answerable except in the case of dower.

Hæres natus. (Rom. L.) An heir born; an heir by descent.

Hæres non tenetur in Angliâ ad debita antecessoris reddenda, nisi per antecessorem ad hoc fuerit obligatus præterquam debita regis tantum. In England, the heir is not bound to pay his ancestor's debts unless he was bound to it by his ancestor, except debts due to the king. But now by 3 & 4 Wm. IV, c. 104, he is liable.

Hæres sanguinis at hæreditatis. Heir of the blood and inheritance.

Hæretico comburendo. See *De hæretico*...

Herbagii pasture. Of the herbage of a pasture, *Herbagium anterius.* The first crop of grass or hay, as opposed to *after-math* or second cutting.

Heredibus et successoribus suis. His heirs and successors.

Herietum. *Heriotum.* *Heriot.* The best beast or other chattel of a tenant given to the lord on the tenant's death. The heriot of a military tenant was his arms and habiliments of war, which belonged to the lord for the purpose of equipping his successor.

Hermaphroditus tam masculo quam femina comparatur secundum prævalentiam sexus incalescentis. A hermaphrodite is to be considered male or female, according to the predominancy of the prevailing sex.

Hæres dat, ut servus faciat. The master pays, that the servant may perform his work; the mutual consideration in a contract of service.

Hæres. An easement.

His testibus. These being witnesses. Words anciently used in deeds.

Hindeni homines. A society of men; in the time of the Saxons, all men were ranked into three classes, and valued, as to satisfaction of injuries, &c., according to the class they were in. The highest class were valued at 1200 s. and were called *twelfhindmen*; the middle class valued at 600 s. and called *sechhindmen*; and the lowest at 200 s. and called *twyhindmen*; their wives were termed *hindas*.

Hoc est. That is.

Hoc paratus est verificare. This he is ready to verify.

Hoc paratus est verificare per recordum. This he is prepared to verify by the record.

Holograph. A deed written entirely by the grantor himself in his own hand.

Homage ancestral. Homage by ancestry, i. e., where a man and his ancestors had immemorially held land of another and his ancestors by the service of homage.

Homagio respectuando. Respecting of homage. This was a writ to the escheator, commanding him to deliver seisin of lands to the heir of the king's tenant, notwithstanding his homage not done. The heir at full

age was to do homage to the king, or agree with him for respiting the same.

Homagium. Homage.

Homagium, non per procuratores nec per literas fieri potuit, sed in propria personâ tam domini quam tenentis capi debet et fieri. Homage cannot be done by proxy, nor by letters, but must be paid and received in the proper person, as well of lord as the tenant.

Homagium reddere. To renounce homage; which took place when the vassal made a solemn declaration of disowning and defying his lord, for which there was a set form and method prescribed by the feudal laws.

Homagium repellit perquisitum. Homage repels perquisition.

Homicidium quod nullo vidente, nullo sciente clam perpetratur. Homicide which is secretly perpetrated, no person seeing or knowing it.

Hominatio. The mustering of men; the doing of homage.

Homine capto in withernamium. A writ to take him that had taken any bondman or woman and led him or her out of the country, so that he or she could not be replevied according to law.

Homine replegiando. Replevying or redeeming a man. A writ to bail a man out of prison (in the same manner that chattels taken in distress may be "replevied"), upon security being given to the sheriff that the man should be forthcoming to answer any charge against him.

Homines ligii. Liege men.

Homo. A man; but it includes both a man and woman in a general sense.

Homo aster. A man that is resident. A resident. *Homo coronatus.* One who had received the first tonsure as preparatory to superior orders; the tonsure was in the form of a corona, or crown of thorns.

Homo gentilis. A gentleman.

Homo loricator. A man armed with a coat of mail.

Homo potest esse habilis et inhabilis diversis temporibus. A man may be capable and incapable at different times.

Homo trium litterarum. A man of three letters, f, u, r; a thief.

Honestum non est semper quod licet. That is not always honourable which is lawful, or which the law allows. See *Ea quæ commendandi...*

Honorarium. A recompense or voluntary fee to one exercising a liberal profession, e. g., a barrister or physician. No action lies for the recovery of *honorarium* in any court of justice, the liability being honourable and amounting to a moral obligation only.

Honorarium jus. (Rom. L.) The law of the prætors and the edicts of the ædiles.

Honoris causâ. For the sake of honour.

Hora non est multum de substantiâ negotii.

The hour is not considered of much consequence as to the substances of the business.

Hors de propos. (Fr.) Out of place; not to the purpose.

Hors de son fee. (Fr.) Out of his fee. An exception to avoid an action brought for rent or services, &c., issuing out of land, by him that pretends to be the lord; for if the defendant can prove that the land is without the compass of his fee, the action fails.

Hors la loi. (Fr.) Out of the place of the law; outlawed. For example, "he was declared *hors la loi*."

Hospitia curiæ. Inns of Court.

Hostes hi sunt qui nobis, aut quibus nos, publice bellum decrevimus: ceteri latrones aut prædonis sunt. They are enemies against whom we have publicly declared war: all others are looked upon as robbers or spoilers.

Hostis humani generis. An enemy of the human race. A pirate.

Hutesium (hurtesium) et clamor. Hue and cry. See *Clamor de haro*.

Hypotheca. (Rom. L.) Hypothecation; a gage or mortgage: a pledge without possession by the pledgee. A security for a debt which remains in the possession of the debtor, differing thus from a *pignus* (pledge) which is handed over to the creditor. Thus a mortgage of land where the mortgagee does not take possession, is in the nature of a *hypotheca*. In Scotland, the term *hypothec* is used to signify the landlord's right which, independently of any stipulation, he has over the crop and stocking of his tenant.

I

Ibidem. In the same place, volume, or case. Abbrev. *Ibid.* or *Id.*

Ibi case panam, ubi et nunc est. Punishment should be inflicted, where the offence exists.

Ibi semper debet fieri triatio, ubi juratores meliorem possunt habere notitiam. A trial should always be had where the jury can get the best information. Subject to the pecuniary or other limitations prescribed by any law, suits relating to immoveable property are instituted where the subject-matter is situate. All other suits are instituted in a Court within the local limits of whose jurisdiction the cause of action arises, or the defendant actually and voluntarily resides, or carries on business or personally works for gain (*Civ. Pro. Code XIV of 1882, ss. 16, 16A and 17*). In criminal cases, every offence is ordinarily inquired into and tried by a Court within the local limits of whose jurisdiction it was committed or in which any consequence ensued by reason of such offence (*Crim. Pro. Code V of 1898, ss. 177 to 189*).

Id certum est quod certum reddi potest; sed id magis certum est quod de semet ipso est certum. That is certain which can be made or rendered certain; but that is more cer-

tain which is certain on the face of it. See *Certum est...*

Idem agens et patiens esse non potest. The same person cannot be both agent and patient. See *Allegans contraria...*

Idem corpus aliâ causâ petendi. The same thing or subject-matter may be subject to different titles or causes of action.

In 1876, A sued K and others to recover certain lands, alleging that he was the karnavan of their tarwad, and that the lands were granted to them for maintenance under an oral agreement which had been broken by K having mortgaged some of the lands. This suit was dismissed. In 1881, A sued the same defendants to recover the same lands on the ground that, as karnavan of the tarwad, he was entitled to resume possession of the lands. *Held*, that the suit brought by A in 1881 was not barred by s. 13 of the Code of Civ. Pro., 1877. *Per* Muttusami Ayyar, J.—Expl. 2 to s. 13 of the Code of Civ. Pro., 1877, refers to the title litigated in the former suit as distinguished from the relief claimed. Where several independent grounds of action are available, a party is not bound to unite them all in one suit, though he is bound to bring before the Court all grounds of attack available to him with reference to the title which is made the ground of action (*Allunni v. Kunjusha*, 7 Mad. 264).

Idem est facere, et non prohibere cum possis; et qui non prohibet, cum prohibere possit, in culpâ est, aut jubet. To commit, and not to prohibit when you can, is the same thing; and he who does not prohibit when he can prohibit, is in fault, or does the same thing as ordering it to be done.

Idem est nihil dicere et insufficienter dicere. It is the same thing to say nothing, and not to say sufficiently.

Idem est non esse et non apparere. Not to be and not to appear are the same; things non-apparent are the same as things non-existent. See *De non apparentibus...*

Idem per idem. The same by the same; like by like. An illustration, or proof, which adds nothing to the consideration of the question.

Idem semper antecedenti proximo refertur. "The same" is always referred to its next antecedent.

Idem sonans. Sounding alike. The Courts will not set aside proceedings on account of the misspelling of names, provided the variance is trifling and does not mislead, and the name as spelt is *idem sonans*.

Identitas vera colligitur ex multitudine signorum. True identity is collected from a multitude of signs. See *Ex multitudine...*

Identitate (idemplitate) nominis. An ancient writ that lay for one taken and arrested in any personal action for another man of the same name; the writ directed inquiry as to the identity of the person. Now obsolete.

Ideo consideratum est per curiam. Therefore it is considered and adjudged by the court.

The formal and ordinary commencement of a judgment.

Ideo consideratione actus et convicti et defendens in misericordia. Therefore it is considered that the account and the defendant be in mercy.

Ideo mihi restat dubitandum. Therefore I must remain in doubt.

Id est. That is. Abbrev. *i. e.*

Idiota a casu et infirmitate. An idiot from chance and infirmity.

Idiota inquirendo. See *De idiota...*

Idoneum se facere Idoneare se. To purge one's self by oath of a crime of which one is accused.

Idoneus homo. A proper man; one who has these three things—honesty, knowledge, and ability.

Id possumus quod de jure possumus. We may do what by law we are allowed to do.

Id quod est magis remotum, non trahit ad se quod est magis junctum, sed à contrario in omni casu. That which is more remote does not draw to itself that which is nearer, but on the contrary in every case.

Id, quod nostrum est, sive facto nostro ad alium transferri non potest. What is ours cannot, without an act of ours, be transferred to another.

Ignis judicium. Purgation by fire; the ordeal of fire. This was performed either by taking up in hand, unhurt, a piece of red-hot iron, or by walking barefoot, and blindfold, over nine red-hot ploughshares, laid lengthwise at equal distances. If the party escaped being hurt, he was adjudged innocent; otherwise he was condemned as guilty.

Ignoramus. We are ignorant of it; we know not. These words were formerly written on a bill of indictment by the grand jury when they rejected the evidence as too weak or defective for putting the accused on his trial. The words now used are "not a true bill" or "not found," or the jury are said to "ignore" or "throw out" the bill.

Ignorantia eorum quæ quis scire tenetur non excusat. Ignorance of those matters which one is presumed to know, does not excuse. See *Ignorantia facti...*

Ignorantia facti excusat; ignorantia juris (or legis) non excusat. Ignorance of fact excuses; ignorance of law does not excuse.

Ignorance may be either of law or of fact. If the heir is ignorant of the death of his ancestor, he is ignorant of a fact; but if, being aware of the death, and of his own relationship, he is nevertheless ignorant that certain rights have thereby become vested in himself, he is ignorant of the law. Ignorance of a material fact may excuse a party from the legal consequences of his conduct; but ignorance of the law, which every man is presumed to know, does not afford excuse (*Per* Lord Campbell, 9. Cl. & F. 324; *Per*

Erle, C. J., *Pooley v. Brown*, 11 C. B. N. S. 575; *Kitchin v. Hawke*, 5 L. R. 2 C. P. 22).

It is a rule that every man must be taken to be cognisant of the law: for otherwise, there is no saying to what extent the excuse of ignorance might be carried; it would be urged in almost every case; and, from this rule, coupled with that as to ignorance of fact, are derived the two important propositions:—(1) that money paid with full knowledge of the facts but through ignorance of the law is generally not recoverable, if there be nothing unconscientious in the retaining of it (*Brisbane v. Dacres*, 5 Taunt. 143; 14 R. R. 718), and (2) that money paid in ignorance of the facts is recoverable provided there was no *laches* in the party paying it, and there was no ground to claim it in conscience (*Marriott v. Hampton*, 2 Sm. L. C. 10th Edn., 409, notes; *Wilkinson v. Johnston* 3 B. & C. 429; 27 R. R. 393; *Bize v. Dickason*, 1 F. R. 286; *Platt v. Bromage*, 24 L. J. Ex. 63).

When both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void. An erroneous opinion as to the value of the thing which forms the subject matter of the agreement is not to be deemed a mistake as to a matter of fact (*Ind. Con. Act IX* of 1872, s. 20).

A contract is not voidable because it was caused by a mistake as to any law in force in British India, but a mistake as to a law not in force in British India, has the same effect as a mistake of fact (*Ibid.*, s. 21).

A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact (*Ibid.*, s. 22; *Dayubhai Tribhovandas v. Lakshmi-chand Panachand*, 9 Bom. 358).

Where money is paid to another under the influence of a mistake, *i. e.*, upon the supposition that a specific fact is true which would entitle the other to the money, but which fact is not true and the money would not have been paid if it had been known to the payer that the fact was untrue, an action will lie to recover it back, and it is against conscience to retain it. But if the money is intentionally paid, without reference to the truth or falsehood of a fact, the plaintiff meaning to waive all inquiry into it, and that the person receiving money shall have the money at all events, whether the fact be true or false, the latter is certainly entitled to retain it (*Per Parke, B., Kelly v. Solari*, 9 M. & W. 54).

An inference that facts were actually known to a person may in some cases fairly be drawn from evidence which shows that he possessed the means of knowing them; but there is no conclusive rule of law that because a party has the means of knowledge he has the knowledge itself (*Per Tindal, C. J., Bell v. Gardiner*, 4 M. & Gr. 11; *Brownlie v. Campbell*, 5 App. Cas. 952; *Townsend v. Crowdy* 8 C. B. N. S. 477); for if the possibility or even probability of actual know-

ledge should be considered as legal proof of knowledge, the presumption might in some cases be contrary to the fact, and such a rule might work injustice (*Per Lord Tenterden, Harratt v. Wise*, 9 B. & C. 712; 33 R. R. 300).

A mistake of fact may be pleaded in a suit for specific performance of a contract. See ss. 26 and 28 of the Specific Relief Act I of 1877.

Section 14 of the Indian Limitation Act, 1877, applies to a case where a plaintiff has been prosecuting his suit in a wrong Court in consequence of a *bona fide* mistake of law (*Brij Mohan Das v. Mannu Bibi*, 19 All. 348).

If parties contract under a mutual mistake and misapprehension as to their relative and respective rights, the agreement thus made is liable to be set aside in equity as having proceeded upon a common mistake (*Cooper v. Phibbs*, L. R. 2 H. L. 149).

Under the Indian Contract Act IX of 1872, s. 21, error of law does not vitiate a contract much less will it annul a conveyance after the lapse of many years, unless there has been some fraud or misrepresentation and an absence of negligence (*Vishnu Sakham v. Kasrinath*, 11 Bom. 174.) See *Krishnan v. Sankara* (9 Mad. 441).

Plaintiff lent a sum of money to defendant, the guardian of her minor son. Finding that his claim against the defendant on the original loan would be time barred, the plaintiff formulated his claim as one for damages arising out of a breach of warranty. *Held* (1) that as the plaintiff knew that the son was an infant and that any representation that the defendant was her infant son's duly authorized agent was incorrect, no such warranty could arise; (2) that even if it be conceded that there was a representation as to her power to bind the estate, it was one on a point of law and thus incapable of supporting a suit (*Shet Mamibhai v. Rupaliba*, 1 Bom. L. R. 646; 24 Bom. 166; following *Beattie v. Ebury*, L. R. 7 Ch. 777; 7 H. L. 102).

Courts of Equity strongly incline against remedying mere mistakes of law. Where a Hindu made a gift to a person whom he said he had taken as his *manas-putra*, *held*, that he could not set it aside on the ground that he erred in supposing that the donee could perform his funeral rites (*Abhachari v. Ramachendrayya*, 1 Mad. H. C. R. 393).

Every man is presumed to be cognisant of the statute law of the realm; and if he infringe it, it is not competent to him to aver, in a Court of Justice, that he has mistaken the law (*Per Sir W. Scott, The Charlotta*, 1 Dods. R. 392; *per Pollock, C. B., Cooper v. Simmons*, 7 H. & N. 717). Where, however, the passing of a statute could not have been known to the accused at the time of doing an act thereby rendered criminal, the crown would probably

think fit to exercise its prerogative of mercy (*R. v. Bailey*, Russ. & Ry. 1; *R. v. Esop*, 7 C. & P. 456).

In criminal cases, the maxim as to *ignorantia facti* applies when a man intending to do a lawful act, does that which is unlawful. In this case there is not that conjunction between the deed and the will which is necessary to form a criminal act; but, in order that he may stand excused, there must be an ignorance or mistake of fact, and not an error in point of law (*Ind. P. C. XLV* of 1860, ss. 76 and 79). If a man intending to kill a burglar under circumstances which would justify him in so doing by mistake kills one of his own family, this is no criminal act; but if a man thinks he has a right to kill an excommunicated person wherever he meets him, and does so, this is wilful murder.

The thinking a thing legal, which is not so, can be no defence to a man who violates a rule of law (*Pro.*, Jan. 8, 1874, Mad. H. C. R., Ap., 35).

Ignorantia iudicis est calamitas innocentis. The ignorance of the Judge is the misfortune of the innocent.

Ignorantia juris, quod quisque tenetur scire, neminem excusat. Ignorance of the law, which every man is presumed to know, excuses no one. See *Ignorantia facti*...

Ignorantia legis neminem excusat. Ignorance of law excuses no one.

Ignoratio elenchi. In logic, ignorance of the proper reply to an adversary's argument.

Ignoratis terminis ignoratus et ars. The terms being unknown, the art also is unknown.

Ignoscitur et qui sanguinem suum qualiter redemptum voluit. He who in defence of his life commits violence, is pardoned for the act. See the *Ind. P. C. XLV* of 1860, ss. 99 to 101.

Illicite. Unlawfully.

Illicitum collegium. An illegal corporation. An unlawful assembly.

Illud, quod aliis licitum non est, necessitas facit licitum; et necessitas inducit privilegium quod jura private. That which is otherwise not permitted, necessity permits; and necessity makes a privilege as to private rights.

Illud, quod alteri unitur, extinguitur, neque amplius per se vacare licet. That which is united to (or merged in) another is extinguished, nor can it be any more independent.

Immoderate suo jure utatur tunc reus homicidii sit. He who may immoderately use his own right is guilty of homicide. See the *Ind. P. C. XLV* of 1860, s. 300, except. 2.

Impedimentum dirimens. Cause or impediment to marriage, which is not removed by the actual solemnization of the rite, but continues in force and makes the marriage null and void; opposed to *impedimentum impediens*.

Imperator solus et conditor et interpres legis existimatur. The emperor is considered the only founder and expounder of the law.

Imperatrix. Empress.

Imperii majestas est tutela salus. The majesty of the empire is the safety of its protection.

Imperitia culpa annumeratur. Want of skill is reckoned as a fault or negligence.

Imperitia est maxima mechanicorum pena. Ignorance or unskilfulness is the greatest fault of mechanics.

Imperium. The right or power of commanding.

Imperium in imperio. Empire in empire.

Impersonalitas non concludit nec legat. Impersonality neither concludes nor binds.

Impetere. Impechiare. To attack; to sue; to prosecute for felony or treason; to impeach.

Impetitio vasti. Impeachment of waste. A restraint from committing of waste upon lands or tenements; or a demand of recompense for waste done by a tenant who has but a limited estate in the land granted.

Impius et crudelis iudicandus est qui libertati non favet. He is to be adjudged impious and cruel who does not favour liberty.

Implicitasset quendam, &c. He should have impleaded a certain, &c.

Importatio. Importation.

Impossibilis institutio in testamentis pro non scripto habetur. An impossible condition in testament is considered as if not inserted at all. See *Lex non cogit*...

Impossibilitas. See *Possibilitas*.

Impossibile nulla obligatio est. (Rom. L.) There is no obligation to do impossible things. See *Lex non cogit*...

Imposito manuum. The laying of hands on any one.

Impotentia culpe annumeratur. Want of strength is reckoned as a fault. Want of strength when strength is warranted expressly or impliedly, is equally blameworthy with want of care or negligence.

Impotentia excusat legem. Want of power excuses the law. This relates to the infirmity of certain persons, whom the law excuses from doing certain acts; as men in prison, idiots and lunatics, persons blind and dumb, &c. See *Lex non cogit*...

Impretiabilis. Invaluable.

Imprimatur. Let it be printed.

Imprimis. In the first place; first of all; chiefly; especially.

Improbri rumores dissipati sunt rebellionis prodromi. Wicked rumours spread abroad, are the forerunners of rebellion.

Impromptu. Without study; off-hand. The word ought to be written *In promptu*.

Improvide. Incautiously.

Impunitas continuum affectum tribuit delinquenti. Impunity affords a continual bait to the delinquent. Impunity confirms the disposition to commit crime.

Impunitas semper ad deteriora invitat. Impunity always invites to greater crimes.

Imputatio. (Rom. L.) Legal liability. An account; a charge.

Imputation des paiemens. (Fr.) This is the same as appropriation of payments in English Law.

In absentem. In the absence. A decree *in absentem*, i. e., an *ex parte* decree.

In ædificiis lapis male positus non est removendus. A stone badly placed in buildings is not to be removed.

In æquali jure melior est conditio possidentis. Where the right is equal, the condition of the party in actual possession shall prevail. Thus, also, when equities are equal, the law shall prevail.

If, for example, the defendant has a claim to the passive protection of a Court, and his claim is equal to the claim which the plaintiff has to call for the active aid of the Court, in such a case the Court will do simply nothing, and accordingly the defendant who has the legal estate will prevail. Thus in the case of *Thorndike v. Hunt* (3 De G. & Jo. 563) where the trustee of a sum of stock for T, in pursuance of an order of the Court made in a suit instituted by his *cestui que trust*, T, transferred what purported to be T's trust funds into Court, and the funds were thereafter treated as belonging to T's estate, and the legal estate therefore vested in the Accountant-General for the purposes of T's trust, and it afterwards appeared that the trustee had provided himself with the means of paying T's fund into Court by fraudulently misappropriating funds which he held in trust for another *cestui que trust*, B,—upon the question whether B had a right to follow the money into Court as against T's estate, the Court held that B had no such right; for that B's right or equity to follow the money was no greater than T's right to retain it, and the circumstance of the legal title being held for T was sufficient to create a preference in favour of T as against B. See also *Newman v. Newman* (28 Ch. D. 674), *Taylor v. Blakelock* (32 Ch. D. 560), and *London and County Bank v. Goddard* (1897, 1 Ch. D. 642). But *nota bene*, the legal title in order to confer protection in such a case, must be an absolutely complete (and not a merely inchoate) legal title (*Roots v. Williams*, 28 Ch. D. 485; *Powell v. London and Provincial Bank* (1893, 2 Ch. D. 555)).

See *In pari delicto... Quod remedio...*

In æquali jure vel injuriâ potior est conditio defendentis. In equal right or wrong, the condition of the person defending is stronger. See *Juum sunt partium...*

In æquali jure vel injuriâ potior est conditio possidentis. In equal right or wrong, he in possession shall prevail.

In æternum. For ever.

In alieno solo. In another's land.

In alio loco. In another place.

In altâ proditione nullus potest esse accessorius sed principalis solummodo. In high treason

no one can be an accessory, but only principal.

In alternativis electio est debitoris. In alternatives, the debtor has the election or choice.

In the case of an alternative promise, one branch of which is legal, and the other illegal, the legal branch alone can be enforced (*Ind. Con. Act IX of 1872, s. 58*).

In ambigua voce legis ea potius accipienda est significatio quæ vitio caret, præsertim cum etiam voluntas legis ex hoc colligi possit. In an ambiguous expression of law, that interpretation should be preferred which is most consonant with equity, especially where the spirit of the law can be collected from that.

In ambiguis casibus semper præsumitur pro rege. In doubtful cases, the presumption is always in favour of the king.

In ambiguis orationibus maxime sententia spectanda est ejus, qui eas protulisset. In doubtful phrases the intention of the person using them is chiefly to be regarded.

In ambiguis religionum quæstionibus. In doubtful religious questions.

In Angliâ non est interregnum. There is no interregnum in England. For, by the constitution, the right of sovereignty is fully vested in the successor to the throne by the very descent of the Crown. See *Indictment de... Rex nunquam...*

In antiquiorem. In order of time.

In arbitrium judicis. At the pleasure or discretion of the Judge.

In arcâ et salvâ custodiâ. In close and safe custody.

In articulo mortis. At the point of death; in a dying state. For example, the deceased was *in articulo mortis* at the time of the execution of the will.

In atrocioribus delictis punitur affectus licet non sequatur effectus. In more atrocious crimes the intent is punished though an effect does not follow. See *Voluntas reputatur...*

In atrocissimis leviores conjectura sufficiunt, et licet judici jura transgredi. In the most atrocious crimes slighter conjectures suffice, and the judge may stretch a point.

In auter (or autre) droit. In another's right. See *Auter droit*.

In bonis, in terris, ver personâ. In goods, in land, or in person; refers to an injury done to a person either in goods, land, or person.

In camerâ. In private; in chambers. Hearing *in camerâ* means hearing a cause in chambers where reasons of a public nature (e. g., evidence of a delicate or indecent character) suggest the propriety of such a course.

Incapax. Incapable.

In capite. In chief. See *Capite*.

In casu consimili. See *Casu consimili*.

In casu extreme necessitatis omnia sunt communia. In cases of extreme necessity, all things become common, i. e., individual

welfare shall, in cases of necessity yield to that of the community. See *Salus populi...*

In casu proviso. In the case provided. See *Casu proviso.*

In causâ. In the case.

Incedit per ignes suppositos cineri doloso. He walks over fire hidden by deceitful ashes.

Incondit et combussit. He set fire to, and burned.

Incerta pro nullis habentur. Things uncertain are reckoned as nothing. See *Certum est...*

Incerta quantitas vitiat actum. An uncertain quantity vitiates the act. See *Certum est...*

Incipitur. It is begun; the beginning. An entry made by the successful party in an action, of the initial words in which the judgment would be recorded, in those numerous cases in which no formal entry of the judgment is made upon the record.

Inciivile est nisi totâ sententiâ inspectâ de aliquâ parte judicare. It is improper to judge of any part unless the whole sentence be examined. See *Ex antecedentibus...*

Inclaris non est locus conjecturis. In things obvious there is no room for conjecture.

In clientelam recipere. To receive under protection or patronage.

Inclusio unius est exclusio alterius. The inclusion of one is the exclusion of another. See *Expressio unius...*

Incolæ territorii. The inhabitants of a territory.

In commendam. In trust or recommendation.

Incommodum non solvit argumentum. An inconvenience does not destroy an argument. It is no answer to an action for the removal of a nuisance that it would be more inconvenient for defendant to remove it than to pay damages for the injury it may cause.

In conjunctivis, oportet utramque partem esse veram. In things conjunctive, each part ought to be true. See *In disjunctivis...*

In consimili casu. In a similar case. See *Casu consimili.*

In consimili casu, consimili debet esse remedium. In similar cases, the remedy should be similar.

In consuetudinibus non diuturnitas temporis sed soliditas rationis est consideranda. In customs, not the length of time but the strength of the reason should be considered.

In contractibus, benigna; in testamentis, benignior; in restitutionibus, benignissima interpretatio faciendâ est. In contracts, the interpretation is to be liberal; in wills, more liberal; in restitutions, most liberal.

In contractibus tacite insunt quæ sunt moris et consuetudinis. Things which are warranted by manner and custom, may be tacitly imported into contracts. An authority to employ a deputy may be either express or implied by the recognized usage of trade (*Ind. Con. Act IX of 1872, s. 190*), as in the case of an architect or builder who employs a surveyor to make out quantities of the building proposed to be erected. An

implied warranty of goods or quality may be established by the custom of any particular trade (*Ibid.*, s. 110). Any usage or custom, by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved; provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract (*Ind. Evi. Act I of 1872, s. 92, proviso 5*).

In contractibus veniunt ea quæ sunt moris et consuetudinis in regione in quâ contrahitur. In contracts those things occur, which are of law and custom in the place, in which the contract is made. See *Lex loci contractus.*

In conventionibus contrahentium voluntas potius quam verba spectari placuit. In contracts the intention of the parties rather than the words actually used by them, should be considered. It must, however, be remembered that in most cases the intention can only be gathered from the words.

Incorporamus. We incorporate.

Incrementum. Increase or improvement, as opposed to *decrementum*, or abatement. It is used in charters for a parcel of ground enclosed out of a common, or improved.

In criminalibus probationes debent esse luce clariores. In criminal cases, the proofs ought to be clearer than light. Every criminal charge involves two things; first, that an offence has been committed, and secondly, that the accused is the author of it. The following rules are noted by Mr. Best as being sound in principle, and generally recognised in practice:—(1) The onus of proving everything essential to the establishment of a charge against accused lies on the prosecutor; (2) There should be clear and unequivocal proof of the *corpus delicti*; (3) The evidence against the accused should be such as to exclude, to a moral certainty, every hypothesis but that of his guilt of the offence imputed to him; (4) The hypothesis of delinquency should flow naturally from the facts proved and be consistent with them all; (5) Presumptive evidence ought never to be relied on when direct evidence is withheld; (6) In cases of doubt it is safer to acquit than to condemn. See *In dubio prode...*

In criminalibus sufficit generalis malitia intentionis cum facto puris gradus. In criminal cases, a general malice of intention, with an act of corresponding degree is sufficient. See *Actus non facit...*

In criminalibus voluntas pro facto non reputatur. In criminal cases the will, will not be taken for the deed. See *Voluntas reputatur...*

In cuius rei testimonium. In witness whereof.

In cumulo. In a heap; in a lump; all at once.

In curia. In the court.

In curiâ wardorum. In the court of wards (or liveries).

In custodia legis. In the custody or keeping of the law. Goods are so called, which having been seized by the sheriff, or being otherwise in the custody of the law, are exempted from distress for rent.

Indebitatus. Indebted; a debtor. *Indebitatus* count is such a short claim as this,—For money lent, &c.

Indebitatus assumpsit. Being indebted, he undertook; an action founded on an implied promise, in which the plaintiff first alleged a debt, and then a promise by defendant in consideration of the debt; such promise, however, was not usually an express but an implied one, the law always implying a promise to do that which the party was legally liable to perform.

In deceptiōe domini regis. In deception or fraud of the king.

Inde data leges ne fortior omnia posset. The laws are made lest the stronger should be altogether uncontrolled.

Indefensus. One that is sued or prosecuted, and refuses to make answer; unanswered.

Indefinitum supplet locum universalis. The indefinite supplies the place of the universal.

Inde producit seetam, &c. Thereof he brings his suit, &c.

Index animi sermo. Speech is the exponent of the mind. Language conveys the intention of the mind. In interpreting statutes a Court of law will not make any interpretation contrary to the express letter of statute, *a verbis legis non est recedendum*; for nothing can so well explain the meaning of the makers of the Act as their own direct words, since *index animi sermo*.

Indicavit. He hath proclaimed. A writ of prohibition that lies for a patron of a church, whose clerk is sued in the spiritual court by another clerk for tithes of a certain value, to bring the action into a court of common law.

Indicia. Signs; marks.

Indictatus. Indicted; one accused by bill preferred to jurors at the king's suit, for some offence, criminal or penal.

Indictio, Indictamentum. Indictment.

Indictment de feloniam est contra pacem domini regis, coronam et dignitatem suam in genere et non in individuo; quia in Angliā non est interregnum. Indictment for felony is against the peace of our lord the king, his crown and dignity in general, and not against his individual person; because in England there is no interregnum.

In disjunctivis, sufficit alteram partem esse veram. In things disjunctive, it suffices should either part be true. See *In conjunctivis*... Where a condition inserted in a deed consists of two parts in the conjunctive, both must be performed, but otherwise when the condition is in the disjunctive; and where a condition or limitation is both in the conjunctive and disjunctive, the latter shall be taken to refer to the whole;

as, if a lease be made to husband and wife for the term of twenty-one years, "if the husband and wife or any child between them shall so long live," and the wife dies without issue, the lease shall, nevertheless, continue during the life of the husband, because the above condition shall be construed throughout in the disjunctive (Co. Litt. 225 a; *Burgess v. Bracher*, 2 Ld. Raym. 1366).

Indistanter. Forthwith; without delay.

Indicisum. What two persons hold in common without partition.

In dominicis terris. On the lord's land.

In dominico suo. In his own demesne or lordship.

Indorso. On the back.

In dubiis benigniora semper sunt præferenda. In cases of doubt the side of mercy should always be preferred.

In dubiis magis dignum est accipiendum. In doubtful things, that which is more worthy is to be received.

In dubiis non præsumitur pro testamento. In doubtful things, it is not presumed in favour of will.

In dubio hæc legis constructio quam verba ostendunt. In a doubtful point, the construction which the words point out, is the construction of the law.

In dubio pars mitior est sequenda. In doubt, the gentler course is to be followed.

In dubio prodote, libertate, innocentia, possessore, debitore, reo, respondem est. When facts are doubtful, presumptions will be in favour of dower, liberty, innocence, possession, the debtor, and the criminal at the bar. See *Tutius semper*...

In dubio sequendum quod tutius est. In doubt that which is the safer course is to be adopted.

Induciae legales. The days between the citation of the defendant, and the day of appearance. The days between the date and return of a writ.

Induciare. To postpone; respite.

Inductio. Induction. The giving a person possession of his church. See *Persona impersonata*.

In eadem conditione. In the same condition.

In embryo. In the womb. The business is in embryo, means, is progressing, is in an unfinished state, is in its infancy.

In emptis venditis potius id quod actum est quam id quod dictum sit sequendum est. In sales we are to consider not so much what the parties said, as what it was their intention to do.

In eo quod plus sit, semper inest et minus. In that which contains the greater, is included also the less. The greater always includes the less. *In majore... In maximā...*

In esse. In being. Actually existing. What is apparent and visible, as opposed to *in posse* or *in potentia* which means that which is

- not, but may be. A child before he is born is a thing *in posse*; after he is born, and for many legal purposes after he is conceived, he is said to be *in esse*, or actual being.
- In eventu*. In the event; in the end.
- In expositione instrumentorum mala grammatica quod fieri possit evitanda est*. In exposition of instruments, bad grammar, so far as it can be done, is to be avoided.
- In extenso*. From beginning to end, leaving out nothing; at length; fully.
- In extremis*. In the last moments; in extremity; on the point of death; on its last legs; in a shaky condition.
- In facie ecclesie*. In the face of the church.
- In faciendo*. In doing or infeasance.
- In facto et jure*. In fact and in law.
- In facto quod finitum et certum est, nullus est conjectura locus*. There is no room for conjecture where the fact is definite and ascertained.
- In facto quod se habet ad bonum et malum, magis de bono quam de malo lex intendit*. In an action which partakes both of good and bad, the law looks more to the good than to the bad. Where a thing may be done in a legal or in an illegal way, the law will presume the former. See *Odiosa et...* *Omnia presumuntur... Ubi quid generaliter...*
- Infantia*. Infancy; to seven years of age.
- Infantie proxima*. Next to infancy.
- In favorabilibus, magis attenditur quod prodest quam quod nocet*. In things favoured, what does good is more regarded than what does harm.
- In favorem libertatis*. In favour of liberty.
- In favorem prolis*. In favour of the offspring.
- In favorem vitæ*. In favour of life.
- In favorem vitæ, libertatis, et innocentie omnia presumuntur*. Everything will be presumed in favour of life, liberty and innocence.
- In feudis antiquis*. In fees ancient.
- In feudis novis*. In fees newly acquired.
- In fictione juris semper existit æquitas*. In the fiction of law, equity always holds or subsists. In law, whenever a fiction is resorted to, it is justified upon some ground of equity or principle of extending the jurisdiction to cases that ought to fall within it. It frequently consists in assuming compliance with some technical formality, when compliance with it is impossible, and it is right that the plaintiff should not be thereby damaged. For example, probate of a will when granted establishes the will from the death of the testator and renders valid all intermediate acts of the executor as such; and letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death (*Ind. Suc. Act X of 1865, ss. 188 and 191; Prob. and Admin. Act V of 1881, s. 88*); the power relates back to the death of the deceased as regards acts done after the death and before the grant of the power. See *Contra fictionem...*
- In fieri*. In the course of accomplishment; incomplete; inchoate.
- In finitum in jure reprobatur*. Infinity is reprehensible in law.
- In flagranti crimini*. See *Flagrante...*
- In formâ pauperis*. In the character of a pauper.
- Informatio pro Rege*. Information for the king. An accusation or complaint exhibited against a person for some criminal offence, either immediately against the king, or against a private person.
- Informatus non sum*. I am not informed; I have no instructions. See *Non sum...*
- In foro conscientie*. In the court of conscience; conscientiously; in a man's own conviction of what is equitable.
- In foro contentiosâ*. In a contentious court.
- In foro divino*. Before the divine tribunal, i.e., the tribunal of God. In the sight of God.
- In foro humano*. Before a human tribunal.
- In foro seculari*. In a secular or lay court.
- Infortunium*. Misadventure or mischance. See *Per infortunium*.
- Infra*. Below; beneath; within. This word, occurring in a book, refers the reader to a subsequent part of the book, like *post*.
- Infra annum luctus*. Within the year of mourning. The phrase is used in reference to the marriage of a widow within a year after her husband's death, which was prohibited by the Civil Law.
- Infra corpus comitatus*. Within the body of the county.
- Infra damnum suum*. Without the bounds or limits of his own property or jurisdiction.
- Infra dignitatem*. Beneath one's dignity.
- Infra hospitium*. Within an inn. The liability of an inn-keeper for the goods of his guests is limited to those goods which are *infra hospitium*.
- Infra nuptiles annos*. Under marriageable age.
- Infra (or intra) quatuor maria*. Within the four seas, i.e., within the kingdom of England.
- In fraudem legis*. To an imposition against law; in fraud of the law.
- In furno domini*. In the lord's oven.
- In futuro*. In future.
- In generalibus latet dolus (or error)*. In general expressions or assertions some trick (or error) is concealed.
- In genere quicumque aliquid dicit, sive actor sive reus, necesse est ut probet*. In general, the party averring a particular fact must prove it, whether he is plaintiff or defendant. See *Affirmanti...*
- Ingenio veloci ac mobili, animo præsentis et acris*. Of a quick and ready talent, and sharp presence of mind.

Ingenuitas. (Rom. L.) Liberty given to a slave by manumission.

Ingenuitas regni. Freeholders and commonality of the kingdom; sometimes this title was given to the barons and lords of the king's council.

In gremio legis. In the bosom, or protection of the law. This is applied to an estate in abeyance when there is no person *in esse* in whom it can vest and abide, though the law considers it as always potentially existing and ready to vest whenever a proper owner appears. Also called *in nubibus*, which see.

Ingressu. A writ of entry whereby a man sought entry into lands or tenements, and lay in many cases, having many different forms. It was also called *præcipe quod reddat*, because these were the formal words inserted in all writs of entry. Now abolished.

Ingressus. An entry. The relief which the heir at full age paid to the head lord for entering upon the fee, or lands fallen by the death or forfeiture of the tenant.

Ingrossator magni rotuli. Clerk of the Pipe. See *Clericus pipæ*.

Inhibitio. Inhibition. A writ to forbid a judge from further proceeding in a cause pending before him, being in the nature of a prohibition.

In his quæ de jure communi omnibus conceduntur, consuetudo alicujus patriæ vel loci non est alleganda. In those things which by common right are conceded to all, the custom of a particular district or place is not to be alleged.

In hoc erratum est. The mistake is in this.

In hac verba. In these very words.

In humanum erat spoliatum fortune sui solidum damnari. It would be a most inhuman thing to condemn in the full amount a man who has already been stripped of all his fortune.

In iisdem terminis. In the same terms.

Inimicus. An enemy.

In infinitum. To no end; without limit.

In invidium. To excite prejudice.

—In invitum. Against an unwilling party. Against a person's will.

Iniquum est alios permittere alios inhibere mercaturam. It is bad to permit some, and to prohibit others to trade. See *Commerciorum jure...*

Iniquum est aliquem rei suæ esse judicem. It is unjust for any one to be judge in his own case. See *In propriâ causâ...*

Iniquum est ingenuis hominibus non esse liberam rerum suarum alienationem. It is unjust for free men not to have the free disposal of their own property. See *Alienatio rei...*

Initialia testimonii. (Sc. L.) The preliminary evidence. Before a witness in Scotland is allowed to be examined in chief, he is first examined with regard to his disposition; whether he bear ill will to either of the par-

ties, whether he has been prompted what to say or has received any bribe. It is called examination *in initialibus*. It is in the nature of the *voire dire* in the English Law.

In judiciis minori succurritur. In judicial affairs a minor is protected. See the Ind. Con. Act IX of 1872, s. 11, and the Ind. Majority Act IX of 1875, s. 2.

In judicio non creditur nisi juratis. In law none are believed than those that are sworn.

Oaths or affirmations shall be made by the following persons:—(a) All witnesses that is to say, all persons who may lawfully be examined, or give or be required to give, evidence by or before any Court or person, having by law or consent of parties, authority to examine such persons or to receive evidence; (b) interpreters of questions put to, and evidence given by witnesses; and (c) jurors. But no omission to take any oath or make any affirmation, or any irregularity in the same shall invalidate any proceeding or render inadmissible any evidence, or shall affect the obligation of a witness to state the truth (*Ind. Oaths Act X of 1873, ss. 5 and 13*).

In jure coronæ. In right of the Crown.

In jure, non remota causa, sed proxima spectatur. In law, the immediate and not the remote cause of any event is regarded.

The fundamental principle applicable alike to torts to the person or to property arising out of negligence is that the proximate and not the remote cause of the injury is to be regarded. If the defendant was the author of the main and efficient cause of the injury, he is liable, though all the consequences of his negligence might reasonably not have been anticipated by him (*Smith v. L. & S. W. Ry. Co.*, L. R. 6 C. P. 14; *Harris v. Mobbs*, 3 Ex. D. 268; *Wilkins v. Day*, 12 Q. B. D. 110); or though, but for the intervention of the neglect or fault of a third person his own negligence might have proved harmless (*Burrows v. March Gas Co.*, L. R. 5 Exch. 67; *Collins v. M. L. Commrs.*, L. R. 4 C. P. 279; *Harrison v. G. N. Ry. Co.*, 10 Jur. N. S. 992; *Romney March v. Trinity House*, L. R. 5 Exch. 204; 7 Exch. 247). But he is not liable where his act was not the direct cause of the injury, and taken by itself was not a breach of duty towards the plaintiff (*Milnes v. Huddersfield*, 10 Q. B. D. 124).

In actions on contract the damages recoverable are such as may fairly and reasonably be considered either (1) arising naturally, *i. e.*, according to the usual course of things, from such breach of contract itself, or (2) such as may be reasonably supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it (*Hadley v. Baxendale*, 9 Exch. 341; 23 L. J. Ex. 179; *Wilson v. Newport D. Co.*, L. R.

1 Exch. 177; *Burton v. Pinkerton*, L. R. 2 Exch. 340; *Ind. Con. Act IX* of 1872, s. 73).

Similar principles are applicable in actions of tort. Generally speaking a wrongdoer is responsible only for the natural and ordinary consequences of his wrongful act or such as he should have known were likely to arise (*Sharp v. Powell*, L. R. 7 C. P. 253; 41 L. J. C. P. 95).

There are some cases in which damage is sustained by one man in consequence of the act of another, which act would be considered tortious by law if the damage incurred could be properly deduced from it, but which nevertheless is not punishable, because the damage actually incurred is too remote to be the subject matter of an action; in other words, because it is not the natural consequence of the act committed by the defendant. Thus if the plaintiff be made ill and put to medical expenses by the defendant's slander of him, that will not be sufficient special damage to support an action. So it is said that there may be injury and damage, but there will be no action if the damage is too remote. It is more correct to say that there is then no legal connection between the two; thus if A slanders B, and C, believing it, beats B, the damage therefrom is, in respect of A, one without injury.

In *Burrows v. March Gas Co.* the defendant had contracted to supply plaintiff with proper service pipe to convey gas. Gas escaped from the pipe thus supplied, into the plaintiff's shop. The servant of a gas fitter employed by the plaintiff happened to be at work in another room and entered the shop with a lighted candle to find out the cause. Immediately an explosion took place damaging the plaintiff's stock and premises. The jury found (1) that the escape of gas was occasioned by a defect in the pipe and that the defect existed in the pipe when supplied, and (2) that there was negligence of the gas fitter's servant in carrying a lighted candle. *Held*, that the plaintiff was entitled to recover, and that the defendants were not relieved from liability from the negligent act of the gas fitter's servant.

In an action brought against carriers by water for damage done to the cargo by water escaping through the pipe of a steam-boiler, in consequence of the pipe having been cracked by frost, it was held that the plaintiff was entitled to recover, because the damage resulted from the negligence of the captain in filling his boiler before the proper time had arrived for so doing, although it was urged that the immediate cause of the damage was the act of God (*Sjordet v. Hall*, 4 Bing. 607; 29 R. R. 651).

A person wrongfully threw a squib on to a stall, the keeper of which in self-defence threw it off again; it then alighted on another stall, was again thrown away, and finally exploding, blinded the plaintiff. *Held*, that the person who first started the squib was liable for the plaintiff's eye, although

it was proximately caused by the last person who removed it from his stall. Chief Justice De Grey observed,—"It has been urged, that the intervention of a free agent will make a difference; but I do not consider Wills and Royal (the persons who merely threw away the squib from their respective stalls) as free agents in the present case, but acting under a compulsive necessity for their own safety and self-preservation (*Scott v. Shepherd*, 2 W. Bl. 894).

A simple example of a consequence too remote to be ground for liability, though it was part of the incidents following on a wrongful act, is afforded by *Gover v. London & S. W. R. Co.* (L.R. 3 Q. B. 25; 37 L. J. Q. B. 57). The plaintiff, being a passenger on the railway was charged by the company's ticket-collector, wrongly as it turned out, with not having a ticket, and was removed from the train by the company's servants with no more force than was necessary for the purpose. He left a pair of race-glasses in the carriage, which were lost, and he sought to hold the company liable not only for the personal assault committed by taking him out of the train, but for the value of these glasses. The Court held without difficulty that the loss was not the 'necessary consequence' or 'immediate result' of the wrongful act, for there was nothing to show that the plaintiff was prevented from taking his glasses with him, or that he would not have got them if after leaving the carriage he had asked for them.

In marine insurance, in order to entitle the assured to recover upon his policy, the loss must be a direct and not too remote a consequence of the peril insured against. For instance, if a merchant vessel is taken in tow by a ship of war, and thus exposed to a tempestuous sea, the loss thence arising is probably ascribable to the perils of the sea (*Hegedorn v. Whitmore*, 1 Stark. N. P. C. 157). But where a ship meets with sea damage, which checks her rate of sailing, so that she is taken by an enemy, from whom she would otherwise have escaped, the loss is to be ascribed to the capture, not to the sea damage (*Livie v. Janson*, 12 East, 653; 11 R. R. 513).

It frequently happens that where a wrongful act has been done to a person, he suffers a damage, but though he may have a cause of action for the wrongful act, yet he cannot found any claim for compensation upon that particular damage, because the connection between such damage and wrongful act is insufficient: that damage is too remote. *In jure, non remota causa sed proxima spectatur*. See *Dammum absque*...

In order that a man's negligence may entitle another to a remedy against him, that other must have suffered harm whereof the negligence is a proximate cause. Now I may be negligent, and my negligence may be the occasion of some one suffering harm, and yet the immediate cause of the damage may be not my want of care but his own.

Had I been careful to begin with, he would not have been in danger; but had he, being so put in danger, used reasonable care for his own safety or that of his property, the damage would still not have happened. Thus, my original negligence is comparatively a remote cause of the harm, and as things turn out, the proximate cause is the sufferer's own fault, for he cannot ascribe it to the fault of another. In a state of facts answering this general description, the person harmed is by the rule of the common law not entitled to any remedy. He is said to be "guilty of contributory negligence" (*Pollock on Torts*, 2nd Edn. pp. 395-6).

Where contributory negligence is not the proximate cause of damage, it cannot be set up as a defence. In *Spaight v. Tedcastle*, 6 App. Cas. 217 a vessel under the charge of a compulsory pilot and also in tow of a steam tug was damaged directly by the conduct of the tug. In an action against the owner of the tug, he was not permitted to set up as a legal defence that if the pilot, when the mischief was about to happen, had himself done a certain thing, the mischief might have been avoided. Lord Selbourne remarked that great injustice might be done if in applying the doctrine of contributory negligence to a case of this sort the maxim *causa proxima non remota spectatur* were lost sight of, when the direct and immediate cause of damage is clearly proved to be the fault of the defendant.

Injuria. Injury; a wrongful act; an infringement of right. Injury is an act contrary to law (*Svami Nayudu v. Subramania*, 2 Mad. H. C. R. 158). See *Dammum absque...*

Injuria cum damno. An injury or wrong accompanied with damage. Usually all torts comprise both these two elements and are classified under this heading as *injuria cum damno*. But there is a considerable group of torts in which the mere *injuria* or wrong suffices to support an action without either alleging or proving that the wrong has been accompanied with or has produced damage. In such a case the injury imports legal damage though there is no pecuniary loss; it is sufficient to show the violation of a right, in which case the law will presume damage. Thus a trespass on another's land may cause no actual damage; and generally wherever any act injures another's right, and would be evidence in future in favour of the wrongdoer, an action may be maintained for an invasion of the right without proof of any specific damage. So, where the roof of a house projects over another man's land, the drip of the rain water is taken to be damaging previous to evidence thereof. This latter group of torts is designated by the phrase *injuria sine damno*. Whenever the *dammum* is a constituent part of the action, that damage must be both alleged and proved, as in the case of *injuria cum damno*. See *Dammum absque...*

Injuria fit ei cui convicium dictum est, vel eo factum carmen famosum. An injury is done to him to whom a reproachful thing is said, or concerning whom an infamous song is made. See the Ind. P. C. XLV of 1860, s. 499.

Injuria illata judici, seu locum tenenti regis, videtur ipsi regi illata, maxime se fiat in exercitum officii. An injury offered to a judge, or person representing the king, is considered as offered to the king himself, especially if it be done in the exercise of his office. See the Ind. P. C. XLV of 1860, s. 228.

Injuria non excusat injuriam. One injury does not excuse or justify another. If one assaults another, the latter is not justified in assaulting the former except in self-defence (*Ind. P. C. XLV* of 1860, s. 99, cl. 3, and s. 102). A wrongdoer is not necessarily, by reason of his being such, disentitled to redress by action, as against the party who causes him damage, for sometimes the maxim holds that *injuria non excusat injuriam*.

Injuria non præsimitur. An injury is not presumed.

Injuria propria non cadet in beneficium facientis. No one shall profit by (or take advantage of) his own wrong. See *Nullus commodum...*

Injuria sine damno. Injury without damage. See *Injuria cum...*

In jus vocando. In calling to court.

Inlagh. See *Utlagh*.

In liberâ elemosynâ. In free gift.

In liberto maritaggio. In free marriage.

In limine. In or on his entrance; on the threshold; at the outset or beginning; preliminary. An objection *in limine* is a preliminary objection.

In loco parentis. In the place of a parent. A person is so called towards and infant, when he assumes the moral obligation of providing for him, as a parent should, e. g., by maintaining and educating him.

In majore summa continetur minor. The less is contained in the greater. See *In eo quod plus...* *In maximâ... Omne majus...*

In malam partem. In a bad sense, so as to wear an evil appearance.

In maleficiis voluntas spectatur non exitus. In criminal acts, the intent is to be taken into consideration and not the result. See *Actus non facit... Voluntas reputatur...*

In maleficio rati habitio mandato equiparatur. In offences against the law, a ratification is equal to a command.

In maximâ potentiâ minima licentia. In the greatest power there is the smallest license. See *In eo quod plus...* *In majore... Omne majus...*

In medias res. Into the heart of the subject, without preface or introduction.

In meditatione fugæ. Meditating flight, In the intention of flying or going away,

Where there is real ground to apprehend that a debtor means to withdraw himself, the creditor appears before a judge, and swears that he believes his debtor to be *in meditatione fugæ*, on which a warrant for imprisoning the debtor is granted, which is taken off on his finding caution or bail, *judicio sisti*, for his appearance before the court for trial. See the Code of Civ. Pro. XIV of 1882, s. 477.

In mortuâ manu. In a dead hand or mortmain. Such a state of possession of land as makes it inalienable; whence it is said to be in a *dead hand*—in a hand that cannot shift away the property. Lands in mortmain are a dead weight upon commerce.

Innamium. A pledge.

In nostro lege unum comma evertit totum placitum. In our law one comma overturns a whole plea.

Innotescimus. We make it known. A kind of letters patent.

In notis. In the notes; in marked characters or writing.

Innovatio. In innovation. An exchange of one obligation for another, so as to make the second come in place of the first.

In novo casu, novum remedium apponendum est. A new remedy is to be applied to a new case.

In nubibus. In the clouds. An estate is said to be *in nubibus* when it is in abeyance, and there is no person *in esse* in whom it can vest and abide. See *In gremio*..

Innuendo, Inuendo. By hinting. A word used in declarations, indictments, and other pleadings to ascertain a person or thing which was named before; as to say, he (*innuendo, i. e.*, meaning plaintiff) is a thief, where there was mention before of another person. The word is most frequently applied to signify, in a proceeding for libel, the averment of a particular meaning in a passage *prima facie* innocent, which, if proved, would establish its libellous character.

In nullâ est erratum. It is erroneous in no part. An allegation by a party that the record is true.

In obscuro. In obscurity.

In odium spoliatoris omnia præsumuntur. Everything will be presumed as against a wrong-doer. Every presumption will be entertained against a wrong-doer. See *Ominia præsumuntur*...

Inofficium testamentum. (*Rom. L.*) An inofficious or undutious will, *i. e.*, a will made without due regard to the claims of the nearest relations, *e. g.*, where a father gave nothing to his son, or a brother to his sister, and such like. See *Querela inofficiosi*...

In omnibus causis pro facto accipitur id in quo per aliam morâ sit quominus fiat. That is always to be considered as done, which the fault of another has prevented. See the Ind. Con. Act IX of 1872, s. 53.

In omnibus contractibus, sive nominatis sive

innominatis, permutatio continetur. In all contracts, whether named or not named, an exchange is comprised, *i. e.*, there is a mutual consideration.

In omnibus erratum. In a general mistake or error.

In omnibus fere minori ætati succurritur. In nearly all respects a person under age is protected by the law. The law is so careful of persons under age that it will not suffer them to alienate, sell, or bind themselves by deed, unless it be for eating, drinking, clothing, schooling, physic, or such other matters that are absolutely necessary.

In omnibus pœnalibus judiciis et ætati et imprudentiæ succurritur. In all penal sentences, age and imprudence should be borne in mind. In criminal proceedings, regard is to be shown to immature years and mental imbecility. Nothing is an offence which is done by a child under seven years of age. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion (*Ind. P. C. XLV of 1860, ss. 82 and 83*).

In construing s. 83 of the Penal Code, the capacity of doing that which is wrong is not so much to be measured by years, as by the strength of the offender's understanding and judgment. The circumstances of a case may disclose such a degree of malice as to justify the application of the maxim *malitia supplet ætatem* (*Queen v. Mussamat Amona*, 1 W. R. Cr. 43).

Upon s. 83 of the Penal Code, the Indian Law Commissioners remark as follows:—"It would seem from this that maturity of understanding is to be presumed in the case of such a child unless the negative be proved on the defence. But according to English Law, during this second period an infant shall be *prima facie* deemed to be *doli incapax*, and presumed to be unacquainted with guilt; yet this presumption will diminish with the advance of the offender's years, and will depend upon the particular facts and circumstances of his case. The evidence of malice, however, which is to supply age, should be strong and clear beyond all doubt and contradiction."

Under the English Law the presumption is that a child more than seven and under 14 has not such guilty knowledge unless the contrary is proved, and this maturity of understanding must be affirmatively proved by the prosecution (*Rea v. Owen*, 4 C. & P. 236; *Reg. v. Vamplew*, 3 F. & F. 520).

It is, however, an irrebuttable presumption of the English Law that a boy under 14 years of age cannot, by reason of physical inability, commit rape or any offence of carnal knowledge (*Reg. v. Waite*, 1892, 2 Q. B. 600; 61 L. J. M. C. 187). Yet for aiding and abetting such offence he may be found

guilty as a principal in the second degree (*R. v. Eldershaw*, 3 C. & P. 396), and he may be convicted of an indecent assault (*Reg. v. Williams*, 1893, 1 Q. B. 320; 62 L. J. M. C. 69).

Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what it either wrong or contrary to law (*Ind. P. C. XLV* of 1860, s. 84).

Whether want of capacity is temporary or permanent, natural or supervening, whether it arises from disease, or exists from the time of birth, it is included in the expression "unsoundness of mind." Thus, an idiot who is a person without understanding from his birth, a lunatic who has intervals of reason, and a person who is mad or delirious, are all persons of "unsound mind."

With regard to insanity, the rule is that every person is presumed to be sane until the contrary be proved, and that to establish the defence of insanity it must be clearly proved that at the time of committing the act charged, the accused was labouring under such a defect of reason from disease of mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong (*R. v. M'Naghten*, 10 Cl. & F. 210).

The fact of unsoundness of mind is one which must be clearly and distinctly proved before any jury is justified in returning a verdict under s. 84 of the Penal Code (*Queen v. Nobin Chunder Banerjee*, 20 W. R. Cr. 70; 13 B. L. R. Ap. 20).

Section 84 of the Penal Code lays down the legal test of responsibility in cases of alleged unsoundness of mind. It is by this test as distinguished from the medical test, that the criminality of an act is to be determined. The accused killed his two young children with a hatchet. The reason given for the crime was that, while he was laid up with fever, the crying of the children annoyed him. It was alleged that the fever had made him irritable and sensitive to sound, but it did not appear that he was delirious at the time of perpetrating the crime. There was no attempt at concealment, and the accused made a full confession. *Held*, that as the accused was conscious of the nature of his act, he must be presumed to have been conscious of its criminality. He was, therefore, guilty of murder (*Queen-Empress v. Lakshman Dagdu*, 10 Bom. 512; followed in *Queen-Empress v. Venkatsawami*, 12 Mad. 459; distinguished in *Queen-Empress v. Sakharam valad Ramji*, 14 Bom. 564).

In omnibus quidem, maxime tamen in juri, æquitas spectanda sit. Equity is to be kept in view in all things, but especially in the administration of the law.

In omni parte error in juri non eodem loco quo facti ignorantia haberi debet, cum jus

finitum et possit esse et debeat. In no part of law should ignorance of fact and ignorance of law be placed on the same footing, since law may be, and ought to be comprised, within certain limits.

In omni re nascitur res quæ ipsam rem exterminat. In every thing a thing is born which destroys that thing itself.

Inops consilii. Wanting advice; in need of counsel.

Inordinatus. One who died intestate.

In pacato solo. In a country which is at peace.

In pais. In the country; on the spot. Act *in pais*, a thing done out of court, and not a matter of record; done without legal proceedings. Trial *per pais*, a trial by the country, *i. e.*, a jury. Conveyance *in pais*, an ordinary conveyance between two or more persons *in the country*, *i. e.*, upon the land to be transferred. Estoppel *in pais*, *i. e.*, a man shall not aver the contrary of that which by his previous conduct he deliberately led other people to infer, as distinguished from estoppel by deed or by record.

In paribus materiis, eadem est ratio. In like subject-matters, the rule of law should be the same. This is the maxim underlying the application of the decisions of the courts to new cases, the *ratio decidendi* of the previous decisions being applicable whenever the circumstances of the new case correspond.

In pari causa possessor potior haberi debet. Where both parties have equal rights, the party in possession is deemed the stronger. See *In æquali jure...*

In pari delicto. In equal guilt. In a like offence

In pari delicto potior est conditio defendentis. In equal fault, the condition of the defendant is more favourable; in other words, there is no contribution between wrong-doers. Where both parties are equally in the wrong, the defendant holds the stronger ground. The law will take notice of an illegal transaction to defeat a suit, not to maintain one.

It is an indisputable proposition that as against an *innocent* party no man shall set up his own iniquity as a defence, any more than as a cause of action. Where, however, a contract or deed is made for an illegal purpose, a defendant against whom it is sought to be enforced may show the turpitude both of himself and the plaintiff, and a Court of Justice will decline its aid to enforce a contract thus wrongfully entered into. For instance, money cannot be recovered which has been paid *ex turpi causa*, *quum dantis æque et accipientis turpitudine versatur*, where the giver and receiver are equally acting in fraud or under an unlawful purpose. An unlawful agreement can convey no rights in any Court to either party, and will not be enforced at law or in

equity in favour of one against the other of two persons equally culpable (*Per Lord Brougham, Armstrong v. Armstrong*, 3 My. & K. 64). A person who contributes to the performance of an illegal act by supplying a thing with the knowledge that it is to be used for that purpose is precluded from recovering the price of the thing so supplied. Nor can any distinction be made between an illegal and an immoral purpose, the rule applicable to both being, *ex turpi causâ non oritur actio*.

"The objection" said Lord Mansfield (*Holman v. Johnson*, Cowp. 343; *Lightfoot v. Tenant*, 1 B. & P. 554; 4 R. R. 735) "that a contract is immoral or illegal as between plaintiff and defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed, but it is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice as between him and the plaintiff—by accident, if I may say so. The principle of public policy is, *ex dolo malo non oritur actio*. No Court will lend its aid to a man who finds his cause of action upon an immoral or illegal act.....It is upon that ground the Court goes, not for the sake of the defendant, but because they will not lend their aid to such a plaintiff. So, if the plaintiff and defendant were to change sides, and the defendant were to bring his action against the plaintiff, the latter would then have the advantage of it, for where both are equally in fault, '*potior est conditio defendentis*.'" See *Ex dolo malo*...

A deed of partition between A and B, members of an undivided Hindu family provided that A who took over all the debts due to the family, should bear the loss, if any, incurred in the appeal then pending in a suit brought by the family on a bond. The bond was held to evidence a fraudulent transaction, and the appeal was dismissed with costs. The decree for costs was executed against B, and satisfied by him. He now sued the son of A (deceased) to recover the amount paid by him. *Held*, that the plaintiff was entitled to recover, the claim not being barred by the rule against contribution between joint tortfeasors (*Lakshmana Ayyan v. Rangasami Ayyan*, 17 Mad. 78).

A defendant may plead the joint fraud of himself and the plaintiff as a bar to an action upon a contract which the plaintiff seeks to enforce by suit (*A. Seshatya v. K. Kandavaya*, 2 Mad. H. C. R. 249).

Where one of several joint wrong-doers liquidates the whole amount of damages obtained in satisfaction of the wrong committed by them all, he is not entitled to contribution from the rest (*Harnath v. Haree Singh*, 4 N.-W. P. 116).

A document aimed at defeating the right of escheat of the Government is against public policy with reference to the decision in *Collector of Manipalpatam v. Cavali*

Vencata (8 Moo. I. A. 500), and the plaintiff being *in pari delicto* with the defendant, could not recover the property (*Per Innes, J., T. Sivithiri v. M. Vasudevan*, 3 Mad. 215).

If fraud is practised by defendant upon the plaintiff, the maxim *potior est conditio defendentis* would not apply (*Dajabhai Tribhorundas v. Lakhmichand Panachand*, 9 Bom. 358).

In pari delicto, potior est conditio possidentis. In equal fault the condition of the possessor is the more favourable. See *In æquali jure*...

In pari materiâ. In a like matter. In an analogous case or position.

In perpetuum. For ever; for ever and ever; in perpetuity.

In perpetuum rei testimonium. In lasting testimony of the fact. If witnesses to a disputable fact are old and infirm, or if they are likely to depart from the realm, it is usual to file a bill in chancery, to perpetuate the testimony of those witnesses, although no suit is pending; for, it may be, a man's antagonist only waits for the death or departure of some of them to commence his suit.

In personam. To the person; against the person. All civil actions are either *in personam* or *in rem*. Actions *in personam* are those which seek recovery of damages, &c. Actions *in rem* are those for a declaration on the status of some particular subject-matter, as an action for the condemnation of a ship in the court of Admiralty (*Mary Stuart v. Newell*, 10 Cal. 865), or an action for nullity of marriage or for the recovery of land in an action of ejectment. Judgments *in personam* are binding only upon the parties and their representatives in interest: a judgment *in rem* avails against the world at large (*Ind. Evi. Act I of 1872*, s. 41). An information *in rem* is a proceeding in the Exchequer, claiming property on behalf of the Crown.

In pios usus. To pious uses.

In pleno comitatu. In full county court.

In pleno lumine. In full day-light; in public.

In penalibus causis benignius interpretandum est. In criminal causes a liberal construction is to be put.

In posse. In potentiâ. In a state of possibility; in expectation. See *In esse*.

In potestate parentis. In the power of the parent.

In prapparatoriis ad iudicium favetur actori. In things preceding judgment the plaintiff is favoured.

In præsenti. At the present time. Also said *in præsens, in præsentiâ*.

In præsentiâ majoris cessat potentia minoris. In presence of the major, the power of the minor ceases. The maxim has been usually cited with special reference to the powers vested formerly in the Court of Queen's Bench, and now in the Queen's

Bench Division of the High Court. It is the function of this Court to keep all inferior jurisdictions within the bounds of their authority and to correct irregularities in their proceedings. The supremacy of this Court may be attributed to the fact that on its coming into any county the power and authority of other criminal tribunals therein situate are *pro tempore* suspended.

In primo gradu. In the first degree or grade.

In principio. In the beginning.

In pristinum statum. In the original state.

In promptu. In readiness; at hand.

In propria causa nemo iudex sit. No one should be a judge in his own cause. See *Nemo debet esse...*

In propria persona. In one's own person; personally.

In propria persona sedente curia. In his own person when the Court is sitting.

In prospectu. In prospect; in view, in expectation.

Inquilinus. (*Rom. L.*) The hirer of a house.

Inquirendo. An authority given in general to some person or persons to inquire into something for the king's advantage.

Inquisitio post mortem. Inquest after death.

In quo quis delinquit, in eo de jure est puniendus. In that which any one offends, in that, according to law, is he to be punished. One who fails to perform the duties of his office ought to be punished in that office.

In re. In the matter of. Used in entitling matters other than actions, in which there is not any plaintiff and defendant, especially in the Court of Bankruptcy. The words, when used at the beginning of a lawyer's letter, indicate the subject of the letter.

In rebus manifestis errat qui auctoritates legum allegat; quia perspicua vera non sunt probanda. In things manifest, he errs who alleges the authorities of law, because obvious truths need not be proved.

In rebus quae sunt favorabilia anima, quamvis sunt damnosa rebus, fiat aliquando extensio statuti. In things which are favourable to the spirit, though injurious to things, an extension of a statute should sometimes be made.

In re communi potior est conditio prohibentis. In a partnership, the partner who prohibits a change has the better right, *i. e.*, where the voices are equally divided.

In re dubia magis inficiatio quam affirmatio intelligenda. In a doubtful case, the negative is rather to be understood than the affirmative.

In reipublica maxime conservanda sunt jura belli. The laws of war are most especially to be preserved in the state.

In rem. To or against the property; to the point. See *In personam*.

In restitutionem, non in penam haeres succedi.

The heir succeeds to the restitution, not to the penalty. If a penalty be adjudged against a father, and he dies before the discharge of the same, his son will not be bound to make it good. See *Crimina morte...*

In restitutionibus benignissima interpretatio faciendus est. The most benignant interpretation is to be made in restitutions.

In salva et arcta custodia. In safe and close custody.

Insana mentis. Of unsound mind.

In satisfactionibus non permittitur amplius fieri quam semel factum est. In damages more must not be received than is received at one time. Generally, where the action is not founded upon the damage only, so that every recurring damage would be a fresh cause of action, but upon a specific unlawful act and the damage, then prospective damages should be given, that is, such damages as in all probability, or almost to a certainty, will hereafter flow from the single unlawful act (whether a breach of contract or tort), as its natural and legal consequences (*Croft v. L. & N. W. R. Co.*, 9 Jur. N. S. 962). So, in some cases of torts, as a battery or libel, as a single recovery of damages bars a future action for the same cause though fresh damage has subsequently arisen, the measure of damages should at first comprise all probable future losses from the injury (*Fetter v. Beale*, 1 Salk. 11; 1 Ld. Raym. 339, 692). See *Bis idem...*

Inscriptio. A written instrument of grant.

In scriptis. In writing; written.

In secundo gradu. In the second degree or grade.

Insidiatio viarum. Lying in wait on the high ways.

Insidiatores viarum. Waylayers.

Insignia. Ensigns or arms. Badges of honour or distinction. Sing. *Insigne*.

In simili materiâ. In a similar matter; dealing with the same or a kindred subject-matter.

In simul computasset. He accounted together. An action for the balance of a settled account. The clause was formerly in use in an action on an account stated, by which it was alleged that the plaintiff and defendant had settled their accounts together, and that the defendant engaged to pay the plaintiff the balance, but had since neglected to do it.

In simul tenuit. A species of the writ of formedon that lay for a co-parcener or co-heir against a stranger, on the possession of the ancestor.

Insinuatio. (*Rom. L.*) Insinuation. Registration among the public records. Insinuation of a will is, in the Civil Law, the first production of it or leaving it in the hands of the registrar, in order to its probate.

- In situ.* In its original condition. See *In statu quo.*
- In societatis contractibus fides exuberet.* The strictest good faith must be observed in partnership transactions.
- In solido.* In substance; in the whole; applied to a joint contract. To be bound *in solidum*, is to be bound for the whole debt jointly and severally with others. Where each is bound for his share, they are said to be bound *pro ratâ parte.*
- In son droit.* In one's own right. See *Autre droit.*
- In specie.* In its own form and essence; not in the form of an equivalent. In coin, as distinguished from paper money.
- Inspecimus.* We have inspected. A word sometimes used to designate letters patent, because they used to begin, after the king's title, with the word *inspecimus.* An exemplification or copy of the enrolment of a charter or letters patent. See *Constat.*
- In spiritualibus.* In spiritual matters.
- Instante.* Immediately; on the instant; instantly or presently.
- Instar dentium.* Like teeth of a saw; in acute angles. Deeds were formerly indented in this manner. Hence, indenture.
- Instar omnium.* Like all such things.
- In statu quo.* In the condition in which he or it was before; in the former condition.
- In stipulationibus cum quaeritur quid actum sit verba contra stipulatorem interpretenda sunt.* In agreements, words are to be interpreted against the person using them, *i. e.*, the construction of the *stipulatio* is against the stipulator, and the construction of the *promissio*, against the promissor. See *Verba chartarum...*
- In stipulationibus promissoris gratiâ tempus adiicitur.* In stipulations, the time of payment will be presumed to have been agreed upon for the benefit of the debtor.
- In stirpes.* To the race; according to lineage. See *Capita.*
- Institutio hæredis.* (*Rom. L.*) The appointment of *hæres* in the will; it corresponds very nearly to the nomination of an executor in English Law.
- Instrumenta domestica, seu adnotatio, si non aliis quoque adminiculis adjuvantur, ad probationem sola non sufficient.* Private instruments in writing, or a mark, if they be not also supported by other evidence, are not alone sufficient proof.
- In subsidium.* In aid.
- In sulcus.* An assault.
- In summo jure.* In the rigour of the law.
- In suo proprio loco.* In its own proper place.
- In suo quisque negotio habetior est quam in alieno.* Every one is duller in his own business than in the business of another.
- Intellectus legis.* Intendment of the law. The understanding, intention and true meaning of the law.
- In temporalibus.* In temporal matters.
- Intentio.* Intention. Also a count; charge; accusation.
- Intentio cæca mala.* A hidden intention is bad.
- Intentio inservire debet legibus, non leges intentioni.* Intention ought to be subservient to the laws; not the laws to the intention.
- Intentio mea imponit nomen operi meo.* My intent gives a name to my act. A person is liable civilly for the consequences of his acts, whether he intend them or not; but to constitute a crime, intention is essential. See *Actus non facit...*
- Intentione.* A writ that lay against him who entered into lands after the death of the tenant in dower or for life, &c., and held out to him in reversion or remainder.
- Inter alia.* Amongst other things.
- Inter alia promissit.* Amongst other things he promised.
- Inter arma leges silent.* In the midst of arms the laws are silent. During the violence of hostilities but little attention is paid to the precepts of justice.
- Inter canem et lupum.* Between the dog and the wolf. At the twilight. Words formerly used to signify that a crime was committed in the twilight.
- Intercedere.* (*Rom. L.*) To become surety; to become bound for another's debt.
- Interdictio.* *Interdictum.* An interdict or interdiction. An ecclesiastical censure prohibiting the administration of divine ceremonies either to particular persons, or in particular places, or both. An injunction.
- Interdictio ignis et aquæ.* Interdiction of fire and water. This was anciently pronounced against those persons who were banished for some crime; by which judgment order was given that no man should receive them into his house, but deny them fire and water, the two necessary elements of life, which amounted, as it were, to a civil death; and this was called *legitimum exilium.*
- Interesse damni.* Interest of or in a loss.
- Interesse lucri.* Interest of or in profit.
- Interesse termini.* An interest in a term, as a lease for years; the right which a lessee acquires in land, before entry, by virtue of a demise at common law.
- Interest reipublica ne maleficia remaneant impunita.* It concerns the state that evil deeds should not remain unpunished.
- Interest reipublica quod homines conserventur.* It concerns the state that men be preserved.
- Interest reipublica res judicatas non rescindi.* It concerns the state that things adjudicated should not be rescinded. A judgment once given is final quoad the Court pronouncing it. It cannot be changed except on appeal or review.

Interest reipublicæ suprema hominum testamenta rata haberi. It concerns the state, that men's last wills be confirmed, or given effect to.

Interest reipublicæ ut carceres sint in tuto. It concerns the state that prisons be in security.

Interest reipublicæ ut pax in regno conservetur, et quæ cunque paci adversentur provide declinentur. It benefits the state that peace be preserved in the kingdom, and that whatever things are averse to peace be prudently declined.

Interest reipublicæ ut quilibet re sua bene utatur. It is to the advantage of the state that every one uses his property properly. See *Sic utere tuo*...

Interest reipublicæ ut sit finis litium. It concerns the state that there be an end to law-suits. In order to prevent parties from bringing their suits whenever they like, even a long time after the cause of action has arisen, when the evidence on the other side has probably been destroyed or not available to them, the statutes of limitation provide that each suit should be brought within the time prescribed by them; and that any suit brought after the specified time be barred. This prevents people from raking up old causes of action, whether real or imaginary, in order to harass their enemies. In order that there may be an end to litigation, the Courts also discountenance agreements which partake of the nature of maintenance and champerty and which tend to promote litigation. See *Ex dolo malo*...

When a matter in dispute has passed in *rem judicatam*, the former judgment while it stands, is conclusive between the parties, if either attempts, by commencing another action, to reopen that matter. For this rule two reasons are always assigned: the one, public policy, for *interest reipublicæ ut sit finis litium*; the other, the hardship on the individual that he should be twice vexed for the same cause, *nemo debet bis vexari pro eadem causâ* (*Lockyer v. Ferryman*, 2 App. Cas. 519).

Interim. Meanwhile; in the meantime. An *interim* order is a temporary order made until something is done, or until further directions.

Inter maines. See *Per descent*.

Inter minora crimina. Amongst lesser crimes or misdemeanours.

Interna non curat prator. (Rom. L.) The prator does not care about internal actions. Internal actions are not to be made objects of law. Religious beliefs are not to be forced by law. A distinction must be observed between law and morality or religion. See *Summa ratio est... Cogitationis*...

Inter nos. Between ourselves.

Internuncio. *Internuncius.* A messenger between two parties. The Pope's representative in other countries.

Inter pares non est potestas. Amongst equals, one has not authority over another.

Inter partes. Between parties. By party and party. A judgment *inter partes* between A and B cannot be considered to conclude A in a suit between A and C, and is not admissible in the second suit as evidence of the truth of the facts adjudicated in the former one (*Balaji Vishvanath Joshi v. Dharma*, 2 Bom. H. C., A. C., 363). But a former judgement *inter partes*, by a Court of competent jurisdiction, upon the same cause of action, is conclusive between the same parties or their representatives in interest, in a subsequent suit brought in another Court (*Bullkiram Nathuram v. Guzerat Mercantile Association Ltd.* (1 Bom. H. C., A. C., 81; *Code of Civ. Pro. XIV of 1882*, s. 13). See *In personam. Res inter alios judicata*...

Interpretare et concordare leges legibus est optimus interpretandi modus. To interpret and to reconcile the laws to laws, is the best mode of interpretation.

Interpretatio faciendæ est ut res magis valeat quam pareat. Such an interpretation is to be adopted, that the thing may rather stand than fall. See *Benignæ faciendæ*...

Interpretatio talis in ambiguis semper fienda est, ut evitetur inconveniens et absurdum. In ambiguous things, such an interpretation is to be made that what is inconvenient and absurd may be avoided.

Interregnum. A space between two reigns. The time during which a throne is vacant in elective kingdoms; for, in such as are hereditary, as in England, there can be no *interregnum*, the sovereign in his artificial capacity never dying.

In terrorem. By way of terrifying or warning. For the purpose of intimidating. Where a condition or penal clause is inserted in a document which the law will not carry out, it is said to be *in terrorem* only and void.

Interruptio multiplex non tollit præscriptionem semel obtentam. Frequent interruption does not take away a prescription once secured. As to the effect of an interruption on an easement see the Ind. Eas. Act V of 1882, s. 15, and the Ind. Limit. Act XV of 1877, s. 26.

Inter se. Between themselves.

Inter vivos. Among the living. A gift or transfer *inter vivos* means a gift or transfer by a living man to a living man; as opposed to one by will.

In testamentis plenius testatoris intentionem scrutamur. In testaments we more especially seek out the intention of the testator. See *Benignæ faciendæ*...

In testamentis plenius voluntates testantium interpretantur. In testaments the will of the testator is very liberally expounded.

In testamentis ratio tacita non debet considerari sed verba solum spectari debent, adeo per divinationem mentis a verbis recedere durum est. In wills, an unexpressed meaning ought not to be considered, but the words alone

ought to be looked to; so hard is it to recede from the words by guessing at the intention. See *Benignæ faciendæ*....

Intestatus decessit, qui aut omnino testamentum non facit; aut non jure fecit; aut id quod fecerat ruptum irritumve factum est; aut nemo ex eo hæres existit. (Rom. L.) A person dies intestate who either has made no testament at all, or has made one not legally valid; or if the testament he has made be revoked or made useless; or if no one becomes heir under it.

In testimonium In testimony; in evidence; in witness.

In totidem verbis. In so many words.

In toto. Totally; altogether; on the whole.

In toto et pars continetur. The part is contained in the whole. See *Omne majus*...

In toto jure generi per speciem derogatur et illud potissimum habetur quod at speciem directum est. It is a maxim in all laws that particular words derogate from general words, and those expressions bear the most commanding sense which point to specific objects.

In totum omnia quæ animi destinatione agenda sunt non nisi verâ et certâ scientiâ perfici possunt. All acts that require a fixed purpose are incomplete unless performed with a full and assured knowledge. See *Omnis rati habitio*...

In traditionibus chartarum non quod dictum sed quod factum est inspicitur. In the delivery of deeds, regard must be had not to what was said at the time, but to what was done. For example, an escrow, which is a writing under seal delivered to a third person, to be delivered by him to the person in whose favour it is made, when certain specified conditions shall have been performed or satisfied, until which time it does not acquire the force of a deed.

In traditionibus scriptorum, non quod dictum est sed quod gestum est inspicitur. In the traditions of writers, not what is said, but what is done is regarded.

Intra mœnia. Within walls.

In transitu. During the passage; while in transit. Generally used of goods in their passage from the vendor to the purchaser.

Intra præsidia. Within safe shelter.

Intra vires. Within its powers. As opposed to *ultra vires*.

Intrinsecum servitium. See *Forinsecum servitium*.

Introductivum novi juris. Introducing a new law.

Intrusio. Intrusion. An unlawful entry into lands and tenements void of a possessor, by him who hath no right to the same.

Intrusion de gard. A writ that lay where an infant under age entered into his lands, and held out his lord.

Intrusione. A writ that lay against an intruder.

Inutilis labor, et sine fructu, non est effectus legis. Useless labour, and without fruit, is not the effect of law.

In vacuo. Without object.

Invadere. To engage or mortgage lands.

In vadio. In gage; in pledge; in mortgage.

Invecta et illata. These are, in the law of Scotland, articles which being brought into a house by a tenant, become liable to the land-lord's right of *hypothec*. Such are articles of household furniture, and the utensils of a trade or business.

Inventiones. Treasure-trove. Money or goods found by any person, and not challenged by the owner.

Inventorium. Inventarium. A list; an inventory. A list or schedule containing a true description of all the goods and chattels of a person deceased at the time of his death, with their value appraised by indifferent persons.

In ventre sa mère. In the mother's womb. An unborn child is so called.

In verbis non verba sed res et ratio quærenda est. In words, not the mere words, but the thing and the meaning, are to be inquired after. See *Benignæ faciendæ*...

Inveritare. To verify or make proof of a thing.

Inverso ordine. In an inverse order.

Investitura est alicujus in suum jus introductio. Investiture is the introduction of another in one's own right.

In viridi observantiâ. Present to the minds of men; in full force and operation.

In vitâ testatoris. In or during the life of the testator.

Invito beneficium non datur. A benefit is not to be conferred upon one who is unwilling. No one can be compelled to accept a benefit. See *Quilibet potest*...

Invito domino. Without or against the assent of the lord or owner.

In vocibus videndum non a quo sed ad quid sumatur. In discourses it is to be seen not from what, but to what, it is advanced.

Ipsæ leges cupiunt ut jure regantur. The laws themselves require that they should be governed by right.

Ipsæ dixit. He himself said it. Used to denote an assertion resting on the authority of an individual. On his *ipse dixit*, means on his sole assertion.

Ipsissima verba. The very identical, or the very same words.

Ipsso facto. By the very act itself. These words are often applied to forfeitures, indicating that when any forfeiture is incurred it shall not be necessary to declare such forfeiture in a Court of law, but that the penalty shall be incurred by the doing of the act prohibited. So, when it is declared that any proceeding shall be *ipso facto* void, it means that such a proceeding is to have not even *prima facie* validity, but may be treated as void for all purposes *ab initio*.

Ipsa facto ab initio. By the deed itself, from (or at) the beginning.

Ipsa jure. By the law itself.

Ipsum matrimonium. The marriage itself.

Ire ad largum. To go at large; to escape; to be set at liberty.

Irrotulatio. Inrolment. The registering or entering of any lawful act in the rolls of the Chancery, King's Bench, &c.

Is cui (qui) cognoscitur. He to whom it is acknowledged; a cognizee.

Is naturâ debet, quem jure gentium dare oportet cujus fidem secuti sumus. He on the faith of whom we have relied, being bound to us by the law of nations, is our debtor according to the rules of natural justice.

Is qui cognoscit. He who acknowledges; a cognisor.

Ita lex scripta est. Thus the law is written. A phrase used to refer the adversary to the letter of the text in question.

Ita quod, providende. So that, wherefore.

Ita semper fiat relatio ut valeat dispositio. Let the relation or interpretation be always such that the disposition may stand. See *Beingne faciendâ...*

Ita utere tuo ut alienum non lædas. See *Sic utere...*

Item. Also; a word used when any article is added to the former.

Iter. (Rom. L.) A foot-way; a road for foot-passengers only: *actus* is a road for passengers on foot or on horse-back; and *via* is a general way for all purposes.

Iteratio. (Rom. L.) Repetition.

J

Jacens. Lying in abeyance. See *Hæredita jacens.*

Jactitationis matrimonii causâ. A suit of jactitation of marriage. This was where one of the parties falsely boasted or gave out that he or she was married to the other, whereby a common reputation of their matrimony might ensue, for which injury was the only remedy the Court could afford was to enjoin perpetual silence on that head.

Jactio. *Jaclatio.* A boasting. To boast.

Jactus. *Jactura mercium.* A throwing overboard of goods for the purpose of lightening a ship; goods which having been cast overboard in a storm, or after shipwreck, are thrown upon the shore.

Jannis clausis. With closed doors.

Jeofaile. *J'ai faillé.* I have failed or erred an error in pleading.

Jeu de Bourse. (Fr.) Speculating in the public funds, stock, &c.

Jocus partitus. An election between two proposals.

Jour. (Fr.) A day.

Judex. A judge; a jurymen. See *Arbiter.*

Judex ad quem. A judge to whom an appeal is made.

Judex æquitatem semper spectare debet. A judge ought always to regard equity.

Judex ante oculos æquitatem semper habere debet. A judge ought always to have equity before his eyes.

Judex a quo. A judge from whom an appeal is made.

Judex bonus nihil ex arbitrio suo faciat, nec propositione domesticæ voluntatis, sed juxta leges et jura pronunciet. A good judge may do nothing from his own judgment, or from a dictate of private will; but he will pronounce according to law and justice. See *Secundum allegata...* *Judicis est judicare...*

Judex curiæ. The judge of the Court.

Judex damnatur cum nocens absolvitur. The judge is condemned, when a guilty person escapes punishment.

Judex de eâ re cognoscat. The judge will take cognizance of that matter.

Judex est Lex loquens. A judge is the Law speaking.

Judex habere debet duos sales; salem sapientiæ, ne sit insipidus, et salem conscientiæ, ne sit diabolus. A judge should have two salts: the salt of wisdom, lest he be insipid; and the salt of conscience, lest he be diabolical.

Judex non potest esse testis in propria causa. A judge cannot be a witness in his own cause. See *Non refert quid...*

Judex non potest injuriam sibi datum punire. A judge cannot punish an injury done to himself. See *Nemo debet esse...*

Judex non reddit plus quam quod petens ipse requirit. A judge restores not more than that which the plaintiff himself requires. See *Judices est judicare...* *Secundum allegata...*

Judicandum est legibus non exemplis. We must judge by the laws, not by the examples or precedents.

Judicata res pro veritate accipitur. An award that has been made is received as a just precedent.

Judicatum solvere. To carry out the verdict; to pay what is adjudged.

Judices delegati. The chosen judges; a court of delegates.

Judices non tenentur exprimere causam sententiæ suæ. Judges are not bound to explain the reason of their sentence.

Judices pedanei. (Rom. L.) Judges chosen by the litigants. These were inferior and assistant judges, and combined the functions of judge and jury.

Judicia in deliberationibus crebro maturescunt, in accelerato processu nunquam. Judgments become frequently matured by deliberations; never by hurried process.

Judicia officium suum excedenti non paretur. To a judge exceeding his office, there is no obedience. As a principle of the interpretation of statutes, a distinction must be drawn between cases in which a Court or

an official omits to do something which a statute enacts shall be done, and cases in which a Court or an official does something which a statute enacts shall not be done. In the former case the omission may not amount to more than an irregularity in procedure. In the latter, the doing of the prohibited thing is *ultra vires* and illegal, and therefore without jurisdiction (*Rameshwar Singh v. Sheodin Singh*, 12 All. 510; followed in *Bagal Chunder v. Rameshwar*, 18 Cal. 496).

Jurisdiction is not conferred by waiver. The fact that objection is not taken to the jurisdiction of the judge does not confer jurisdiction upon him, if he has no inherent jurisdiction (*Kumarasami v. Subbaraya*, 23 Mad 314; *Government of Bombay v. Ramalingji*, 9 Bom. H. C., A. C., 242).

A Magistrate, as an executive officer, is not bound to attend to a Judge's extra judicial observations not warranted by law (*Queen v. Goomanee*, 17 W. R. Cr. 59).

See *Extra territorium jus...*

Judicia posteriora sunt in lege fortiora. The latter decisions are the stronger in law.

Judicia sunt tanquam juris dicta, et pro veritate accipiuntur. Judgments are, as if were, the words of the law, and are received as truth.

Judiciis posterioribus fides est adhibenda. Credit is to be given to the latter decisions.

Judicio sisti. (*Se. L.*) A security to abide judgment within the jurisdiction of the Court, the surety undertaking that the principal shall appear to answer any action to be brought within a certain time. See *In meditatione...*

Judici satis poena est quod Deum habet ultorem. It is punishment enough for a judge, that he has God as his avenger.

Judex est judicare secundum allegata et probata. It is the duty of a judge to decide according to facts alleged and proved. Under this maxim a party can recover only according to his claim as *stated and proved*. A party cannot be allowed to prove facts inconsistent with his case as stated in the pleadings. It must be decided with reference to allegations upon which he has himself rested it. Nor should a judge by his decree award to the plaintiff more than what he himself asks for, *Judex non reddit plus quam quod petens ipse requirit*. His business is to give or withhold, wholly or in part, that which is sought by the plaintiff.

A plaintiff must recover *secundum allegata et probata*, and no decree should be given in his favour on a point not raised in the pleadings, nor embodied in an issue (*Joytara v. Mahomed*, 8 Cal. 975; 11 C. L. R. 399; discussed in *Sunduri Dassie v. Mudhoo Chander*, 14 Cal. 592).

A decree of the High Court of Judicature at Calcutta was founded on assumed state of facts, contradictory to the facts alleged in the plaint and the evidence adduced in support of it. Upon appeal, such decree was

reversed, the Judicial Committee holding (1) that it was incorrect to conclude parties by inferences of fact, not only inconsistent with the allegations in the plaint constituting the case the defendants had to meet, but which were in reality contradictory to the case made by the plaintiff in the Court below; and (2) that the legal conclusions deduced by the High Court were from assumed facts, which were not consistent with settled principles of law or equity (*Eshan Chander Singh v. Sama Churn Bhutto*, 11 Moo. I. A. 7; 6 W. R. P. C. 57; 1 Suth. P. C. 649).

The plaintiff alleging that a certain lane was his property and that he had been obstructed by the defendants from building a door upon it, sued for an injunction and for damages. The Court held that the plaintiff's title to the land was not established, but passed a decree declaring that both the plaintiff and the defendants were entitled to use the lane by right of easement. *Held*, that this declaration, which had not been asked for, should not have been made, and that the suit should have been dismissed for want of proof of the title alleged by the plaintiff (*Sambayya v. Gopalakrishnamma*, 15 Mad. 489).

When a plaintiff sues to recover possession of property on the allegation that he had purchased it with his own money, and the suit is dismissed in the Court of first instance, the Court of appeal is not justified in giving the plaintiff a decree for a portion of the property, on the ground that the whole was the property of a joint Hindu family, in which the plaintiff was a co-sharer (*Mukhoda Soondury Dasi v. Ram Churn Karmakar*, 8 Cal. 871; 11 C. L. R. 194).

Section 123 of the Civil Procedure Code contemplates that a defendant shall, in his written statement, set forth the case he intends to make at the trial. The rule followed in *Eshan Chander Singh v. Sama Churn Bhutto*, (11 Moo. I. A. 7), *Mohammed Zahoor Ali Khan v. Mt. Thakooranee* (11 Moo. I. A. 468), and *Naraine v. Nurro-hurry* (Marsh. 70), that a plaintiff must be held to the state of facts and equities alleged and pleaded by him in his plaint, or involved in, or consistent therewith, applies also to the case made on the pleadings by a defendant. Where in an ejectment suit, the only defence set up by the defendant was that of purchase, he could not be allowed at the trial to prove a case of continuous user and possession adverse to the plaintiff (*Chova Kara v. Isa bin Khalifa*, 1 Bom. 209).

The decree in a suit should have regard to the title alleged in the plaint, and should not be given in the plaintiff's favour upon title wholly different from that advanced by him (*Jankee v. Jhanjoo*, 2 N.-W. P. 407).

Where Government sued to set aside some decrees, and for possession of land, *held*, that it could not be allowed to set

up a claim to the land, such claim not having been made in the plaint and not appearing in the issues (*Mooktakeshee Debu v. The Collector of Burdwan*, 12 W. R. 205).

A judge is not bound to decide a question not raised in the plaint; and when a case comes before the High Court in special appeal, the parties are to be held to the case made in the Courts below (*Tara Chand Roy v. Nobin Chunder Roy*, 21 W. R. 132).

The plaintiff cannot for the first time in the appellate stage found his title on adverse possession for a long time, where such a case was not set forth in the pleadings, and is inconsistent therewith (*Protap Chunder v. The Collector of Gawalparah*, 22 W. R. 216).

In a suit brought to establish a right of ownership over certain land, *held*, that it was not competent to the Court to enter into and decide upon the plaintiff's right to an easement over the same. A question not raised by the plaint ought not to be decided by the Court (*Lalji Ratanji v. Gangaram Tuljaram*, 2 Bom. H. C., A. C., 176).

A plaintiff is bound to prove his claim as he lays it in his plaint and is not entitled to succeed upon proof of a different title (*Bijoya Debia v. Bydonath Deb*, 24 W. R. 444).

Held, that the lower appellate Courts were wrong in giving the plaintiff a decree for possession on the ground of occupancy right, he not having claimed such relief in his plaint (*Brindabam Chunder v. Dhannunjoy*, 5 Cal. 246; 4 C. L. R. 443; following *Bijoy Debia v. Bydonath*, 24 W. R. 444).

In a suit for declaration of title to a share in land, although the plaintiffs fail to satisfy the Court that their title has been acquired in the way they state, yet if it is admitted that they have been in possession for more than twelve years, the effect of such possession is to extinguish other titles if these existed, and plaintiffs ought to have the declaration sought (*Ram Lochun Chuckerbutty v. Ram Soonder*, 20 W. R. 104).

A declaration of title may be made upon proof of twelve years' adverse possession. Such declaration cannot, however, be given on a title not distinctly stated in the plaint or in the issues (*Shiro Kumari Debi v. Govind Shaw*, 2 Cal. 418; following *Ram Lochun v. Ram Soonder*, 20 W. R. 104, and dissenting from *Tirumalasami v. Ramasami*, 6 Mad. H. C. R. 420).

Plaintiff sued to recover certain land, alleging that he had purchased it from a third party. The Court of first instance found that he had not proved the title alleged; and although it had been contended that a title by twelve years' adverse possession was proved, the Court held that it was not proved, and as it was not alleged in the plaint, and no issue raised as to it, the plaintiff was not entitled to succeed, and accordingly dismissed the suit. The appellate Court held that he had proved ad-

verse possession and gave him decree on the strength of that title. *Held*, on appeal to the High Court, that as the suit was one for possession, and the defendant had express notice in the Lower Appellate Court that the plaintiff relied on the title of adverse possession and as he took no objection on the ground that he should be allowed an opportunity to call evidence to rebut it, and as he had consequently not been prejudiced by the course adopted by the Lower Appellate Court, the decree of that Court should be confirmed. *Bijoya Debia v. Bydonath Deb* (24 W. R. 444) and *Shiro Kumari v. Gobind Shaw* (2 Cal. 418) distinguished. *Joytara v. Mahomed* (8 Cal. 975) discussed.—*Sunduri Dassee v. Mudhoo Chunder* (14 Cal. 592).

See *Non refert quid...*

Judicis est jus dicere non dare. It is the province of the judge to administer, not to make, the laws. See *Jus dicere... Ejus est interpretari...*

Judicis officium est opus diei in die suo perficere. It is the duty of a judge to finish the work of each day, within that day.

Judicis officium est ut res ita tempore rerum querere, quæsit tempore tutus eris. It is the duty of a judge to enquire as well into the time of things, as into things themselves; by enquiring into the time you will be safe.

Judicium. (Rom. L.) A trial before judges.

Judicium a non suo iudice datum nullius est momenti. A judgment given by an improper judge is of no force. When the Court has not jurisdiction over a cause, the whole proceeding before it is *coram non iudice*, and it is not necessary to obey one who is not a judge of the cause, any more than it is to obey a mere stranger. See *Judicia officium...*

Judicium Dei. The judgment of God. Trials by ordeal were so called, on the belief that God would work a miracle rather than suffer innocence to perish.

Judicium ferri, aque, et ignis. The ordeal of iron, fire, and water.

Judicium non debet esse illusorium; suum effectum habere debet. A judgment ought not to be illusory; it ought to have its consequence. See *Executio est...*

Judicium parium. The judgment of one's peers; the verdict of a jury.

Judicium redditur in invitum, in præsumptione legis. Judgment, in presumption of law, is given against an unwilling party, i. e., against a party, whether he will or not.

Judicium revocetur. Let the judgment be revoked, i. e., set aside.

Judicium semper pro veritate accipitur. Judgment is always taken for truth.

Juge de paix. (Fr.) In France, an inferior judicial functionary appointed to decide

summarily controversies of minor importance, especially such as turn mainly on questions of fact. He has also the functions of a police magistrate. A justice of the peace.

Jura eodem modo destruuntur quo constituuntur (constituuntur). Laws are abrogated by the same means by which they were made. With respect to the statutes of the realm, these being created by an exercise of the highest authority which the constitution of the country acknowledges, cannot be dispensed with, amended, suspended, or repealed, but by the authority by which they were made.

Jura fiscalia. The revenue or exchequer rights. Revenue laws.

Juramenta corporalia. Corporal oaths; so called because the witness when he swears lays his right hand on the Holy Evangelists, or New Testament.

Juramentum. An oath. There are several sorts of oaths in law; viz., *juramentum promissionis*, where oath is made either to do or not to do such a thing; *juramentum purgationis*, when a person is charged with any matter by bill in Chancery, &c.; *juramentum probationis*, where any one is produced as a witness to prove or disprove a thing; and *juramentum triationis*, when any persons are sworn to try an issue, &c.

Juramentum calumnia. See *Antejuramentum*.

Juramentum est indivisibile, et non est admitendum in parte verum et in parte falsum. An oath is indivisible; it is not to be received as partly true and partly false.

Jura natura sunt immutabilia. The laws of nature are immutable or unchangeable.

Jura personarum. The right of persons.

Jura publica anteferenda privatis. Public rights are to be preferred to private. See *Salus populi*...

Jura publica ex privato promiscue decidi non debent. Public rights ought not to be promiscuously decided in analogy to a private right.

Jurare duodecimâ manu. See *Duodena*...

Jurare est Deum in testem vocare, et est actus divini cultus. To swear is to call God to witness, and is an act of religion.

Jura regalia. Royal rights; the rights of the Crown. These are, power of judicature; of life and death; of war and peace; masterless goods; assessments; and minting of money. The Earl of Chester, the Bishop of Durham and the Duke of Lancaster had in those counties *jura regalia* as fully as the king had in his palace, as pardoning treasons, murders, felonies, appointing judges, &c. See *Regalem potestatem*...

Jura regis specialia non conceduntur per generalia verba. The special rights of the king are not affected by general words. See *Roy n'est lié... Verba chartarum*...

Jura rerum. Rights of things. The rights which a person may acquire in things.

Jura sanguinis nullo jure civili dirimi possunt. The rights of blood can be taken away by no civil law.

Jura singulorum. The rights of individuals.

Jura summa imperia. The rights of sovereignty. The supreme rights of dominion.

Jurata. A jury.

Jurato creditur in judicio. In judgment, credit is given to a sworn witness. See *In judicio non*...

Jurator. A juror.

Juratores. Jurors. See *Bona patria*.

Juratores sunt judices facti. Juries are the judges of fact.

Juratoria. An oath.

Jure civili. By the civil law or right.

Jure coronæ. By the right of the crown.

Jure dare. To give a judicial decision. *Jus dicere* means to give a decision according to law, in conformity with the law of the land, as *jus dederunt, non jus dixerunt*, they have given a judicial decision, but they have not given a decision according to the law of the land. See *Jus dicere et*...

Jure divino. By divine right. This is the tenure by which, according to certain high fliers, kings hold their crown, without any reference to the will of the people.

Jure ecclesiæ. By the church right.

Jure emphyteutico. By the law of rents and services.

Jure gentium. By the law of nations.

Jure hæreditatis. By right of heirship.

Jure humano. By the human law. By that law which is founded on the assent of men, as opposed to *jure divino*.

Jure mariti. By right of a husband. See *Jus mariti*.

Jure matrimonii. By right of his or her marriage.

Jure natura. By the law of nature.

Jure natura æquum est neminem cum alterius detrimento et injuriâ fieri locupletiozem. By the law of nature it is not just that any one should be enriched by the detriment or injury of another.

Jure pleno. By full right.

Jure representationis. By a right of representation. See *Capita*.

Jure societatis, per socium ære alieno, socius non obligatur: nisi in communem arcum pecunie versa sunt. Under the law of partnership, one partner is not bound to pay a debt contracted by the other, unless the moneys have been appropriated to the common stock. See the Ind. Con. Act IX of 1872, ss. 249-51.

Jure uxoris. In right of his wife.

Juri pro se introducto cuique licet renunciare. Every man may renounce the benefit of a stipulation inserted in his favour. See

Quilibet potest... Omnes licentiam... Compare Invito beneficium...

Jurisconsulti. Barristers; lawyers. Sing. *Jurisconsultus.* Abbrev. *Ictus.*

Jurisdictio est potestas de publico introducta cum necessitate juris dicendi. Jurisdiction is a power introduced for the public good, with the necessity of expounding the law.

Juris effectus in executione consistit. The effect of law consists in execution. See *Executio est fractus...*

Juris et de jure. Of law and from law. A conclusive presumption which cannot be rebutted is called a presumption *juris et de jure.* See *Præsumptiones...*

Juris et seisinæ conjunctio. A conjunction or combination of right and possession.

Juris naturalis aut divini. Of natural or divine law.

Juris positivi. Of positive law; absolute right. See *Positivus juris.*

Juris præcepta sunt hæc; honeste vivere, alterum non ledere, suum cuique tribuere. The rules of law are these, to live uprightly, not to injure another, to give every one his own. See *Sic utere tuo...*

Juris prudentia est divinarum atque humanarum rerum notitia, justæ atque injustæ scientiæ. Jurisprudence is the knowledge of things divine and human; the science of the right and the wrong.

Jurisprudentia legis communis Angliæ est scientia socialis et copiosa. The jurisprudence of the common law of England is a social and copious science.

Juris utrum. Whether of right. A writ that lay for the succeeding incumbent of a benefice, to recover the lands or tenements belonging to the church which had been alienated by his predecessor. See *Assisa de utrum.*

Jus. Law; right; equity; authority.

Jus accrescendi. The right of accruing or survivorship.

Jus accrescendi inter mercatores pro beneficio commercii locum non habet. The right of survivorship does not exist among merchants, for the benefit of commerce. For the encouragement of trade, there is no survivorship of a capital or stock in trade among merchants and traders; for, this would be ruinous to the family of the deceased partner. At the death of a partner, his share in the property will go to his heirs, and not to the surviving partners. It is also settled that all real property belonging to and used for the purpose of a partnership is to be considered as personal property, and that the right of survivorship (*jus accrescendi*) does not apply to it.

A joint speculation in improving land on a hazard of profit and loss is treated in equity as in the nature of merchandise, and the *jus accrescendi* not allowed. (*Webbe v. Lester*, 2 Bom. H. C., A. C., 152).

See *Æquitas est quasi...*

Jus accrescendi præfertur oneribus. The right of survivorship is preferred to incumbrances. The right of survivorship prevails against any attempt by a joint tenant to incumber his estate.

Jus accrescendi præfertur ultimæ voluntati. The right of survivorship is preferred to the last will and testament, or to the right by devise.

Jus ad rem. A right to property; an inchoate and imperfect right. This is an abridged expression for *jus ad rem acquirendam*, and it properly denotes a right to the acquisition of a thing. See *Jus in re...*

Jus æmæcia. The right of primogeniture.

Jus albinatus. See *Albinatus jus.*

Jus Bacci. The privilege of the Bench.

Jus civile. Civil Law. The whole body of law peculiar to any State is its *jus civile*, as distinguished from *jus gentium* (law of nations) which is common to all mankind. The Roman Law, therefore, which is peculiar to the Roman State, is its *jus civile*, sometimes called *Jus Civile Romanorum*, but more frequently *Jus Civile* only.

Jus civile est quod quisque sibi populus constituit. Civil law is that which each nation has established for itself.

Jus Civitatus. The freedom of the city of Rome.

Jus commune, et quasi gentium. The common law, and, as it were, the law of nations.

Jus constitui oportet in his quæ ut plurimum accidunt non quæ ex inopinato. Law ought to be made with a view to those cases which happen most frequently, and not to those which are of rare or accidental occurrence. See *Ad ea quæ...*

Jus coronæ. The right of the crown. The king may purchase lands to him and his heirs, but he is seised thereof *in jura coronæ* (by right of his crown), and all the lands and possessions whereof the king is thus seised, shall follow the crown in descents, &c.

Jus curialitatis Angliæ. The courtesy of England; an estate which by the favour of the law of England arises by act of law, and is that interest which a husband has for life in his wife's fee-simple or fee-tail estates, general or special after her death. See *Tenens per legem...*

Jus deliberandi. The right of deliberating, which by the law of Scotland, is given to an heir, who is not compellable to enter into an estate within a year and a day from the death of his ancestor. See *Annus deliberandi.* Compare the *Cretio* of the Roman Law.

Jus descendit et non terra. The right descends and not the land.

Jus devolutum. The right of the Church to present a minister to a vacant parish in case the patron shall neglect to exercise his right within the time limited by law.

Jus dicere. See *Jure dare.*

Jus dicere et non jus dare. To administer the law and not to make the law. See *Judicis est jus... Benignæ faciendæ...*

Jus disponendi. The right of disposition by will or otherwise. The right to call upon a trustee to execute conveyances of the legal estate, as the *cestui que trust* directs.

Jus dividendi. The right of disposing of realty by will.

Jus divinum. Divine law.

Jus domicili. The law of the domicile. The right of inheritance does not follow the law of the domicile of the parties, but that of the country where the land lies (*lex loci*). But with respect to personal property, which has no locality, and is of an ambulatory nature, the rule is that it should be distributed according to *jus domicili*. The owner in any country may dispose of his personal property. If he dies, it is not the law of the country in which the property is, but the law of the country of which he was a subject, that will regulate the succession, for, *mobilia sequuntur personam*. See the Ind. Suc. Act X of 1865, s. 5.

The domicile of a widow is the same as that of her husband, unless she has changed it after his death. By the law of England, the question of the capacity of a person to enter into a contract is decided by the law of his domicile. This principle of the English Law is adopted by s. 11 of the Contract Act IX of 1872 (*Kashiba v. Shripat Narshiv*, 19 Bom. 697).

Jus duplicatum. Two-fold or double right. See *Droit-droit*.

Jus eminens. Eminent right. The right of a State over the persons and property of its citizens. This right so far as it concerns property, is called eminent domain. See *Dominium eminens*.

Jus emphyteusis. See *Emphyteusis*.

Jus est norma recti; et quicquid est contra normam recti est injuria. Law is the rule of right; and whatever is contrary to the rule of right is an injury.

Jus et consuetudines gentium. The law and customs, usages, of nations.

Jus et fraus nunquam cohabitant. Right and fraud never dwell together.

Jus et norma loquendi. Rule and formula of pleading.

Jus et seisinam. Right and possession.

Jus et seisinam conjunctam. Right and possession conjoined. The most perfect of all titles.

Jus ex injuriâ non oritur. A right cannot arise to any one out of his own wrong. See *Ex dolo malo... Nullus commodum...*

Jus feciale. The law of nations.

Jus fiduciarium. Right of or in trust; a trust.

Jus fodiendi. A right of digging.

Jus gentium. The law of nations. This was used in its general sense as representing the united wisdom of the law-givers of all nations, in which sense it corresponds to the *lex natura*, or law of nature. That law which natural reason has established among men and which is adopted and maintained equally by all nations. In a restricted sense it applied to the particular codes of nations with whom the Romans were brought into contact.

Jus gladii. The right of the sword; the power of life and death; the executory power of a king; supreme jurisdiction.

Jus habendi. The right to be put in actual possession of property.

Jus habendi et retinendi. The right to have and retain the profits, tithes and offerings, &c., of a rectory or parsonage.

Jus hæreditatis. The right or law of inheritance.

Jus imaginis. The right of using pictures and statues of ancestors among the Romans. It had some resemblance to the modern right of bearing a coat of arms.

Jus in casu necessitatis. A right in desperate extremity.

Jus in personam. A right availing against some one individual in particular, and having for its object the acquisition of a *jus in rem*, the full expression being *jus in personam ad jus in rem acquirendum*. See *In personam*.

Jus in re. A right in property. A complete and full right, accompanied by corporal possession. In Roman Law, however, the expression was equivalent to *jus in re alienâ* (a right in another's property), as contradistinguished from *jus in re propriâ* (a right in one's own property). A *jus in re* was a servitude or easement, i. e., a right availing against the world at large, acquired over property residing in another person.

Jus in re alienâ. A right in another's property. A right of enjoyment which is incident not to full ownership or property, but to certain limited ownerships in, or rights over, or in respect of the thing, such as easements or servitudes.

Jus in re inheret ossibus usufructuarii. A right in the thing cleaves to the person of the beneficiary.

Jus in rem. A right availing against the world at large. See *In personam*.

Jus in re propriâ. A right in one's own property. A right of enjoyment which is incident to full ownership or property, and is often used to denote the full ownership or property itself. It is distinguished from *jus in re alienâ*, which is a mere easement or right in or over the property of another.

Jus inter gentes. International law.

Jus jurandi forma verbis differt, re convenit; hunc enim sensum habere debet, ut Deus invocetur. The form of taking an oath differs in language, agrees in meaning; for it ought to have this sense, that the Deity is invoked.

Jus legitimum. A legal right, A right in law.

Jus mariti. (Sc. L.) The right of a husband. The right acquired by a husband in the moveable estate of his wife.

Jus merum. Pure or mere right.

Jus naturale est quod apud omnes homines eandem habet potentiam. Natural right is that which has the same force among all men.

Jus naturalis. Law of nature. Often used interchangeably with *jus gentium*, but in a stricter sense it was that law which nature has taught all the animals.

Jus non patitur ut idem bis solvatur. The law does not suffer that the same thing be twice paid.

Jus non scriptum. Unwritten or common law; the general customary law.

Jus non scriptum tacito et illiterato hominum consensu et moribus expressum. The unwritten law was declared by the tacit and unlettered consent and customs of the people.

Jus pascendi. The right of grazing.

Jus patronatus. The right of patronage or presentation to a benefice.

Jus possessionis. The right of possession.

Jus possibilitatis. The right of possibility.

Jus postliminii. The right of return, reprisal, or recovery. The right of restitution after re-capture. The right in virtue of which persons and things taken by an enemy are restored to their former state on their coming into the power of the nation to which they belonged; persons being re-established in their former rights, and things being restored to their original owner.

Jus presentandi est incorporale. The right of presentation is incorporeal.

Jus presentationis. The right of presenting.

Jus pratensum. Pretensed right. Where one is in possession of land, and another who is out of possession claims and sues for it, the pretended right or title is said to be in him who so claims and sues for the same.

Jus precarium. A right by courtesy, granted upon request. A right depending on request, and which cannot be enforced at law.

Jus privatum. The civil or municipal law, especially of Rome.

Jus proprietatis. The right of property.

Jus proprium ipsius civitatis. The law peculiar to any particular State. See *Jus civile*.

Jus prosequendi in judicio quod alicui debetur. The right of proceeding to judgment for what is due to any one.

Jus publicum privatorum pactis mutari non potest. A public right cannot be altered by the agreements of private persons. See *Modus et conventio*...

Jus recuperandi, intrandi, &c. The right of re-covering and entering land, &c.

Jus relictae. (Sc. L.) The right of a widow in her deceased husband's personality.

Jus representandi. The right of representation.

Jus respicit aequitatem. The law pays regard to equity. The law has always regard, more or less, to natural justice or equity, and qualifies or withholds its own process accordingly. And now the law is obliged to observe all that portion of natural equity which was enforceable in the Court of Chancery.

Jus sanguinis, quod in legitimis successionibus spectatur, ipso nativitatis tempore quæsitum est. The right of consanguinity, which is regarded in succession by law, is established at the very moment of birth.

Jus scuti. Liberty (right) to bear a shield.

Jus scriptum. Written or enacted law; it comprises the statute law.

Jus summum sæpe summa est malitia. Law enforced to strictness sometimes becomes the severest injustice.

Jus superveniens auctori accrescit successori. A right growing to a possessor accrues to the successor.

Jus suum. His own right.

Jus tertii. The right of a third party. A person is said to set up the *jus tertii* when, being *prima facie* liable to restore certain property to A he alleges a paramount title in B. An agent may not set up *jus tertii* against his principal; nor can a tenant set up the right of a third party as against the landlord to whom he has attorned, during the continuance of the tenancy. But he may plead that such title has determined by conveyance or otherwise. See the Ind. Evi. Act I of 1872, s. 116.

Jus testamentorum pertinet ordinario. The right of testaments belongs to the ordinary.

Justiciarios itinerantes. Justices itinerant; more commonly called, in modern times, the judges of assize. Also called *justices in eyre* or *justices in itinere*.

Justificatio. Justification.

Justitia. A statute; law; ordinance. Also the jurisdiction or office of a judge.

Justitia debet esse libera, quia nihil iniquius venali justitiis; plena, quia justitia non debet claudicare; et celeris, quia dilatio est quædam negatio. Justice ought to be unbought, because nothing is more hateful than venal justice; full, for justice ought not to halt

or to be shut out; and quick, for delay is a kind of denial.

Justitia est duplex; viz., severè puniens et verè præveniens. Justice is double, namely, punishing severely, and truly preventing.

Justitiâ fiamatur solium. Justice strengthens the throne.

Justitia nemini negandu est. Justice is to be denied to none.

Justitia non est neganda, non differenda. Justice is neither to be denied nor delayed.

Justitia non novit patrem nec matrem, solam veritatem spectat justitia. Justice knows neither father nor mother; justice regards truth alone.

Justitiâ piepoudrous. Speedy justice. See *Curiâ pedis...*

Justitium facere. To hold plea of any thing.

Jus triplex est; proprietatis, possessionis et possibilitatis Right is three-fold; of property, of possession, and of possibility.

Jus utendi. The right of using.

Jus venandi et piscandi. Right of hunting and fishing.

Jus vendit quod usus approbavit. The law dispenses what use has approved.

Juxta æquum et bonum. According to what is equal and good.

Juxta formam statuti. According to the form of the statute.

L

Laches. Negligence; indolence. Laches has been defined to be "a neglect to do some thing which by law a man is obliged to do" (*Per Lord Ellenborough, Sebag v. Abitbol*, 4 M. & S. 462; *Turner v. Hayden*, 4 B. & C. 2).

Læse majestatis, crimen. (*Rom. L.*) The crime of high treason. The crime of injuring or hurting the king; a crime against the sovereign authority.

Lagan. Laganum maris. See *Ligan*.

Las partidas. The partitions.

Lata culpa dolo æquiparatur. Gross negligence is tantamount to fraud.

The maxim expresses the rule, that every man is taken to intend that which is the natural consequence of his actions. If a man is grossly negligent, and some consequences ensue therefrom, he must be taken to intend such consequences.

Negligence is defined to be "the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do" (*Per Alderson, B., Blyth v. Birmingham Co.*, 11 Exch. 784).

There have been said to be three degrees of diligence, *viz.*, exact, ordinary, and slight;

so there are said to be three degrees of negligence, *viz.*, gross, ordinary and slight. Ordinary diligence is the use of such precautions only, as persons of average prudence would employ, having respect to the time, place, and object of the care. But the omission of such ordinary precautions would not be ordinary, but gross, negligence. The use of every possible precaution, or of more than the ordinary precaution, is *exact* diligence, and the omission of some such diligence is *slight* negligence (*Collett on Torts*, 6th Edn., p. 268).

Under the Indian Contract Act, in all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality, and value as the goods bailed. And if he has taken this amount of care, he is not, in the absence of any special contract, responsible for the loss, destruction, or deterioration of the thing bailed (*ss. 151 and 152*).

To sustain an action for negligence, their must be an obligation on the part of the defendant to use care, and a breach of that obligation to the plaintiff's injury (*Srami Nayudu v. Subbramaniam Mudalia* (2 Mad. H. C. R. 158)).

Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness. Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that if he had, he would have had the consciousness. The imputability arises from the neglect of the civil duty of circumspection (*Nidamarti Naga Bhushanam's Case*, 7 Mad. H. C. R. 110).

To sustain a charge under s. 289 of the Penal Code, there should be evidence not only of negligence, but also that such negligence, would probably lead to danger to human life or of grievous hurt (*Pro. April 8*, 1867, 3 Mad. H. C. R., Ap., 83).

The plaintiff who had hired a thatched bungalow of the defendant, lit a fire in the fire-place in one of the rooms. The chimney took fire and the plaintiff's furniture was destroyed. Plaintiff had all along been ignorant that the chimney had been thatched over. *Held*, that the landlord, defendant, was liable in damages for the loss sustained by him. He should have given the plaintiff notice of the defective construction of the chimney. Plaintiff had a right to assume that it was properly built (*Radha Krishna v. W. C. O'Flaherty*, 3 B. L. R., A. C., 277).

Latens incrementum. A latent increase, whereby something goes on adding to itself, but it is impossible to say how much at any one moment is added. A natural acquisition of land by alluvion. See *Alluvio*.

Latitat. He lies hid. A writ of summons in personal actions at the King's Bench founded on a fictitious concealment of himself by the defendant. It alleged that the defendant *latitat et discurreit*, lurks and wanders about.

Latitat et discurreit. He lurks and wanders about. See *Latitat*.

Larcinivium. Larceny; theft.

Latroni cum similem habuit, qui furtum celare vellet, et occulte sine iudice compositionem ejus admittere. The law held him as bad as a thief, who was willing to conceal the theft, and privately to accept a composition without bringing the thief to justice. See *Liberta pecunia*...

Laudatio. Testimony delivered in Court concerning an accused person's good behaviour and integrity of life.

Le bane. He who is the cause of another man's death, is said to be *le bane*, i. e., malefactor.

Legalis homo. A loyal or pious man. A lawful man, i. e., one not outlawed, excommunicated, or infamous.

Legalis moneta. Lawful money; money in lawful currency.

Legatos violare contra jus gentium est. It is contrary to the law of nations to injure ambassadors.

Legatum. A bequest; legacy.

Legatum morte testatoris tantum confirmatur, sicut donatio inter vivos traditione solâ. A legacy is confirmed by the death of a testator, in the same manner as a gift from a living person is by delivery alone.

Legatum optionis. (Rom. L.) A legacy to a person of any article or articles that he liked to choose or select out of the testator's estate.

Legatus. An ambassador or Pope's nuncio.

Legatus est donatio testamento relicto. A legacy is a gift bestowed by a will.

Legatus regis vice fungitur à quo destinatur et honorandus est sicut ille cujus vicem gerit. An ambassador (Viceroy or Governor) fills the place of the king by whom he is sent and is to be honoured as he is whose place he fills.

As the king cannot be present in all places at all times, a Viceroy and Governors are appointed and are endowed with many of the royal privileges. The Governor General in Council and the Local Governments are empowered, under the Code of Criminal Procedure V of 1898, s. 401, to suspend, remit or commute a sentence passed upon any person.

The Indian Legislature cannot make and the Crown cannot sanction a law having for its object, the dismemberment of the state in times of peace, as such a law must affect the authority of Parliament, and those unwritten laws and constitutions of the United Kingdom of Great Britain and Ireland, whereon depends the allegiance of persons to the Crown of the United Kingdom. Section 113 of the Evidence Act I of 1872, therefore, though not disallowed, is not protected by s. 24 of Stat. 24 & 25 Vic. c. 67, and the direction therein contained as to the conclusive effect of a notification in the Gazette of India cannot be followed (*Damodar Gordhan v. Ganesh Devram*, 10 Bom. H. C., A. C., 37).

The Legislature has powers expressly limited by the Act of the Parliament which created it, but has, when acting within those limits, plenary powers of legislation as large and of the same nature as those of Parliament itself. When plenary powers of legislation exist as to particular subjects, whether in an Imperial or Provincial Legislature, they may be well exercised either absolutely or conditionally. Legislation, conditional on the use of particular powers, or on the exercise of a limited discretion entrusted by the Legislature to persons in whom it places confidence, is not uncommon, and, in many circumstances, may be highly convenient (*Empress v. Burah*, 4 Cal. 172, P. C.).

Legem abrogare. To repeal a law.

Legem facere. To make law upon oath, i. e., to clear one's self of an action, &c., by an oath and the oath of neighbours.

Legem ferre (or *rogare*). (Rom. L.) To move or propose a law.

Legem habere. To be competent to give evidence upon oath

Legem promulgare. To publish a law.

Legem sciscere. (Rom. L.) To give consent and authority to a proposed law.

Leges Angliæ sunt tripartitæ; jus commune, consuetudines, ac decreta comitiorum. The laws of England are threefold; common laws, custom, and decrees of parliament.

Leges et constitutiones futuris certum est dare formem negotiis, non ad facta præterit arevocari; nisi nominatim et de præterito tempore et adhuc pendentibus negotis cautum sit. Laws should be construed as prospective, not as retrospective, unless they are expressly made applicable to past transactions and to such as are still pending. And parties must *primâ facie* be taken to contract with reference to existing law only, unless there be enough to show that they contracted with reference to possible alterations in the law. See *Nova constitutio*...

Leges figendi et refigendi consuetudo periculosissima est. The custom of making and annulling laws is most dangerous.

Leges non scriptæ. The unwritten or traditional laws. The common law.

Leges non verbis sed rebus sunt impositæ. Laws are imposed not on words, but on things.

Leges posteriores priores contrarias abrogant. Subsequent laws repeal prior contrary laws.

Later laws repeal earlier laws inconsistent therewith. The legislature which possesses the supreme power in the State possesses, as incidental thereto, the right to change, modify and abrogate the existing laws. To assert that one Parliament can by its ordinances bind another, would in fact be to contradict this plain proposition. If an Act of Parliament contain a clause "that it shall not be lawful for the King, by authority of Parliament, during the space of seven years, to repeal this Act" such a clause, which is technically termed *clausula derogatoria*, is void, and the Act may be repealed within seven years. See *Non impedit clausula... Perpetua lex est...*

One Act may repeal another by express words or by implication; for it is enough if there be words which by necessary implication repeal it (*Great Central Gas Co. v. Clarke*, 11 C. B. N. S. 835). But a repeal by implication is never to be favoured, and must not be imputed to the legislature without necessity (*Dobbs v. Gr. Junction Waterworks Co.*, 9 Q. B. D. 158; 9 App. Cas. 49) or strong reason (*Great W. R. Co. v. Swindon R. Co.*, 9 App. Cas. 787; 53 L. J. Ch. 1075). It is only effected where the provisions of the later enactment are so inconsistent with or repugnant to those of the earlier that the two cannot stand together. Special Acts are not repealed by general Acts unless there be some express reference to the previous legislation, or a necessary inconsistency in the two Acts standing together (*Kuiner v. Phillips*, 1891, 2 Q. B. 272, citing *Gregory's Case*, 6 Rep. 19 b) which prevents the maxim *generalia specialibus non derogant* from being applied.

Not merely does an old statute give place to a new one, but, where the common law and the statute differ, the common law gives place to the statute if expressed in negative terms (*Paget v. Foley*, 2 Bing. N. C. 629; *R. v. Aslett*, 1 N. R. 7; *Dresser v. Bosanquet*, 4 B. & S. 460). Statutes, however, are not presumed to make any alteration in the common law, further or otherwise than the Act does expressly declare.

Statutes are not to be held to be repealed by implication unless the repugnancy between the new provision and a former statute be plain and unvoidable (*Sitapathi Nayudh v. The Queen*, 6 Mad. 32).

A special enactment is not impliedly repealed by a subsequent affirmative general enactment, if the two enactments are not so repugnant as to be incapable of standing together (*Sabapati Mudaliyar v. Narayanaswami Mudaliyar*, 1 Mad. H. C. R. 115).

The rule of construction, *leges posteriores priores contrarias abrogant*, is no doubt

applicable to a new affirmative enactment, but has application only when there is such complete contrariety or repugnancy between it and a prior enactment as makes it certain that the Legislature could not have intended the latter to stand. When there is an admissible construction by which both enactments can reasonably have operated together, that construction must be adopted. This is a well settled rule; and the instance of its application most opposite to the present case is that of a special and particular enactment and a subsequent general enactment relating to the same subject but without negative terms. It has been more than once laid down that in such a case the special enactment is not repealed (*Mahomed Abdul Wahab Sahib v. Comandur Ramasamy Aiyengar*, 4 Mad. H. C. R. 277).

Bombay Act III of 1865, though it formed a part of Act XXI of 1848, which is repealed by the Contract Act, is not, being a special Act applicable to the Bombay Presidency, itself repealed. It must be read with s. 30 of the Contract Act (*Dayabhai Tribhovandas v. Lakhmichand*, 9 Bom. 358).

As to the effect of the repeal of an enactment, see ss. 6, 7 and 8 of the General Clauses Act X of 1897.

Leges sola memoria et usu retinebant. They retained their laws solely by memory and custom.

Leges sub graviore lege. Laws subject to superior law.

Legibus amica simplicitas. Simplicity is the best quality of legislation. See *Nimia subtilitas...*

Legibus patria optime instituti. They who were best instructed in the laws of the country.

Legibus solutus. Not bound by law.

Legis constructio non facit injuriam. The construction of law does no injury.

Legis interpretatio legis vim obtinet. The interpretation of law obtains the force of law.

Legitim. *Legitime.* (*Se. L.*) The legal share (one-half or one-third, according to circumstances) of the father's free moveable property due on his death to his children.

Legitima potestas. See *Liege poustie*.

Legitimatio per subsequens matrimonium. A legitimization of children by the subsequent marriage of their parents. See *Per subsequens...*

Legitimi hæredes (*Rom. L.*) Lawful heirs. The agnates, because the inheritance was given to them by a law of the Twelve Tables.

Legitimo matrimonio copulati. Joined in lawful matrimony.

Legitimum exilium. See *Interdictio ignis...*

Le grand costumier. The great book of customs.

Lenocinium. (Sc. L.) The connivance of a husband in his wife's adultery.

Leonine societas. A lion's company. A partnership in which one partner has all the loss, and another all the gain. It is so called because the lucky partner has the "lion's share" of the profits. Such a partnership was void in Roman Law, and it would be under the English Law, being inherently inconsistent with the notion of partnership. See Act IX of 1872, s. 239.

Leproso amovendo. An ancient writ that lay to remove a leper who thrust himself into the company of his neighbours in any parish, either in the church, or at other public meetings, to their annoyance.

Le roy le veut (Fr.) The king wills it so to be. The form of words to express the royal assent to public bills. See *Soit fait...*

Le roy n'est lié par aucun statut, s'il ne fut expressément nommé. The king is not bound by any statute unless he be expressly named therein.

Le roy remercie ses loyal sujets, accepte leur benvolence, et ainsi le veut. The king thanks his loyal subjects, accepts their benevolence, and wills it thus. The form of the royal assent to a bill of supply.

Le roy s'avisera. (Fr.) The king will consider of it. Words used to express an indirect denial of the royal assent.

Le salut du peuple est la supreme loi. The safety of the people is the highest law. See *Salus populi...*

Les lois ne se chargent de punir que les actions extérieures. Laws charge themselves with punishing overt acts only. So long as an act rests in bare intention it is not punishable. See *Acta exteriora... Actus non facit...*

Lettres de cachet. Sealed letters; secret letters, issued by the king of France authorizing the imprisonment of a person.

Levantes et cubantes. Rising up and lying down. Levant and couchant. Cattle that have been so long on the ground of another that they have lain down and risen to feed, supposed to be a day and a night.

Levari facias. That you cause to be levied. See *Fieri facias*. A writ of execution directed to the sheriff for levying a sum of money upon a man's lands and tenements, goods and chattels, who has forfeited his recognizance. Now obsolete.

Levari facias damna de disseisitoribus. A writ formerly directed to the sheriff for the levying of damages which a disseisor had been condemned to pay to the disseisees.

Levari facias de bonis ecclesiasticis. That you cause to be levied of the ecclesiastical goods.

Levari facias quando vicecomes returnavit quod non habuit emptores. An old writ commanding the sheriff to sell the goods of a debtor which he had already taken, and

had returned that he could not sell them; and as much more of the debtor's goods as would satisfy the whole debt.

Levari facias residuum debiti. An old writ directed to the sheriff, for levying the remnant of a partly satisfied debt upon the lands and tenements or chattels of the debtor, where part has been satisfied before.

Levis culpa. Ordinary negligence.

Levissima culpa. Slight negligence.

Levissima diligentia. See *Diligentia*.

Lex æterna. The law of nature, which God at man's creation infused into him for his preservation and direction.

Lex aliquando sequitur æquitatem. Law sometimes follows equity.

Lex amissa. An infamous, perjured, or outlawed person.

Lex Angliæ est lex misericordiæ. The law of England is a law of mercy.

Lex Angliæ non patitur absurdum. The law of England suffers not an absurdity.

Lex Angliæ nunquam matris sed semper patris conditionem imitari partum judicat. The law of England rules that the offspring shall always follow the condition of the father, never that of the mother.

Lex Angliæ nunquam sine Parlamento mutari potest. The law of England cannot be changed but by Parliament.

Lex apostata. Legem apostatare. To do a thing contrary to law.

Lex appetit perfectum. The law aims at perfection.

Lex armorum. The law of arms; the law of war.

Lex beneficiæ rei consimili remedium præstat. A beneficial law affords a remedy for a similar case.

Lex canonica. Canon law.

Lex citius tolerare vult privatum damnum quam publicum malum. The law will more readily tolerate a private mischief than a public evil or inconvenience. See *Salus populi...*

Lex communis. Common law.

Lex Cornelia de sicariis. The Cornelian law, relating to assassins.

Lex deficere non potest in justitiâ exhibendâ. The law cannot be defective in dispensing justice.

Lex delationes semper exhorret. The law always abhors delays.

Lex deraisnia. The proof of a thing which one denies to be done by him, where another affirms it; defeating the assertion of his adversary, and showing it to be against reason or probability. Used among the old Romans as well as the Normans.

Lex domicilii. The law of the place of a man's domicile. See *Jus domicilii*.

Lex est ab Eterno. Law is from the Eternal.

Lex est anima regis, et rex est anima legis. The law is the soul of the king; and the king is the soul of the law.

Lex est dictamen rationis. Law is the dictate of reason.

Lex est exercitus judicium tutissimus ductor. The law is the safest leader of the army of judges.

Lex est linea recti. Law is a straight line or a line of right.

Lex est ratio summa, quæ jubet quæ sunt utilia et necessaria, et contraria prohibet. Law is the highest reason, which commands those things which are useful and necessary, and forbids what is contrary thereto.

Lex est sanctio sancta (or norma recti) jubens honesta et prohibens contraria. Law is a sacred sanction (a straight precept) commanding what is honourable, and forbidding what is contrary.

Lex est tutissima cassis, sub clypeo legis nemo decipitur. Law is the safest helmet; under the shelter of the law none is deceived.

Lex et consuetudo parliamenti. The law and customs or usages of parliament.

Lex fingit ubi subsistit æquitas. The law makes use of a fiction where equity subsists. This is the maxim by which the law seeks to reconcile theoretical consistency with substantial justice. See *In fictione juris...*

Lex forestæ. The forest-law.

Lex fori. The law of the place of the tribunal in which any case is tried. The forms of remedies, modes of proceeding and execution of judgments are regulated by the *lex fori*, i. e., the law of the place where the action is instituted. It regulates everything pertaining to procedure and evidence, including the forms of practice, the times for commencing and proceeding with actions, the requisites of pleading, and such like. See s. 11 of the Indian Limitation Act XV of 1877. Obligations in respect to the mode of their solemnization are subject to the rule *locus regit actum* (the place governs the act); in respect to their interpretation, to the *lex loci contractus* (the law of the place of the contract); in respect to the mode of performance, to the law of the place of performance. But the *lex fori* determines when and how such laws, where foreign, are to be adopted, and in all cases not specified above supplies the applicatory law. See *Lex loci contractus*.

In *Molan v. The Duke de Fitzjames* (1 B. & P. 188) it was observed that "a person suing in this country must take the law as he finds it; he cannot by virtue of any regulation in his own country enjoy greater advantages than other suitors have; and he ought not, therefore, to be deprived of any superior advantage which the law of

this country may confer; he is to have the same rights which all the subjects of this kingdom are entitled to."

Lex fori regit remedium. The law of the tribunal (i. e., the tribunal where application is made for remedy), governs the remedy.

Lex Hostilia de furtis. The Hostilian law concerning thefts. A Roman law which provided that a prosecution for theft might be carried on without the owner's intervention.

Lex intendit vicinum vicini facta scire. The law presumes one neighbour to know the actions of another.

Lex judicat de rebus necessario faciendis quasi reipsa factis. The law judges of things which must necessarily be done as if actually done.

Lex judicialis. An ordeal.

Lex loci celebrationis. The law of the place of performance.

Lex loci contractus (or actus). The law of the place of the contract. Thus, if an action were brought in England, upon a contract made in France, the law of England would, as regards such action, be the *lex fori*, and the law of France the *lex loci contractus*. As to the formal requirements of a contract, those which are demanded by the law of the place where it is made are sufficient and necessary for its validity everywhere; in other words, the validity of a contract is decided by the law of the place where it was made. If valid there, it is by the general law of nations (*jus gentium*) held valid everywhere. The same rule applies to the invalidity of a contract; if void or illegal by the law of the place of the contract, it is generally void or illegal everywhere. Thus, if for want of a stamp a contract made in a foreign country is void there, it cannot be enforced here. But if it is simply inadmissible in evidence there, its admissibility or inadmissibility in this country, is a matter of procedure simply, and is governed by the law of this country (*lex fori*), and the Court will admit it in evidence, provided it bears the proper stamp according to the law of this country. (*Bristow v. Sequeville*, 2 Exch. 275; *Vinayak Lakshman v. Mahadaji*, P. J., 1873, p. 112; *James v. Catherwood*, 3 D. & R. 190; *Ex parte Melbourne*, 6 Ch. 64), for no Court is bound to take notice of the revenue laws of another country (*Holman v. Johnson*, Cowp. 143; *James v. Catherwood*, *supra*; *In the goods of Mac Adam*, 23 Cal. 187). But no nation is bound to recognize or enforce any contracts injurious to its own interests or its subjects. The law of the place where the contract was made will also govern its interpretation. In construing contracts made in a foreign country, the Courts look to the meaning attached to them by the law of that country. But the rule does not apply where the contract is intended to be performed in another country. By the law of the place of performance, is the mode of performance

and the nature of the discharge to be governed.

The rule of international law that the law of the place of a contract governs its validity, is subject to the qualification that every state may refuse to enforce a contract when it is for the fraudulent evasion of its laws, or is injurious to its public institutions or interests (*Subraya Pillai v. Subraya Mudali*, 4 Mad. H. C. R. 14). Compare s. 14 (e) of the Civ. Pro. Code XIV of 1882.

The capacity of a person to contract is governed by the law of the country where the contract arose (*Mole v. Roberts*, 3 Esp. 163; *Hearsey v. Girdharee Lal*, 3 N.-W. P. 338). So under the Indian Contract Act, every person is competent to contract who is of the age of majority according to the law to which he is subject, i. e., his own personal law. See on this subject the Indian Majority Act IX of 1875, which applies to persons domiciled in British India, and *Rohilkhand and Kumaon Bank v. Row* (7 All. 490).

The law of domicile regulates capacity to contract (*Kashiba v. Shripat Narshir*, 19 Bom. 697).

Held, with respect to a covenant not to carry on business, contained in an agreement of service executed in England, and to be performed in India, that treating the covenant in restraint of trade as one entered into in England, it could not, even if valid by the law of England, be enforced in India, inasmuch as its object was to contravene the law of India, i. e., s. 27 of the Contract Act IX of 1872 (*Oakes v. Jackson*, 1 Mad. 184).

Where, according to the *lex loci contractus*, a promissory note or bond cannot, in the absence of registration, be a source of legal right, no action on an unregistered note or bond can be maintained. Whether a suit will lie upon the consideration for the instrument is a question of procedure to be governed by the *lex fori* (*Palaniappa Chetti v. Periakaruppan Chetti*, 17 Mad. 262).

Under a contract, made and to be performed in the territory of an Independent State, between the State and contractors, a third party became a surety to the State for the due performance of the contract. Upon the contract failing, the surety repaid the amount advanced by the State to the contractors. The surety sued the principals who were subject to the jurisdiction of the Courts in British India. In deciding whether the contract had or had not failed within the meaning of the suretyship undertaken by the plaintiffs, *held*, that not the law of British India, but what was in the contemplation of the parties as to the result of the contract when they entered into it, must be regarded (*Sujan Singh v. Gungaram*, 8 Cal. 337; L. R. 9 I. A. 58).

Lex loci delicti. The law of the place where a tort has been committed.

Lex loci regit actum. The law of the place (i. e., the place where any act is done) governs the act.

Lex loci rei sitæ. The law of the place where the thing is situate. Sometimes called *lex situs*, or *lex loci situs*. Thus it is said that the descent of immoveable property is regulated according to the *lex loci rei sitæ*, i. e., according to the law of the place where it is situated. The laws of the place where an immoveable property is situate govern the rights of the parties, the modes of transfer, and the solemnities which should accompany them. The title, therefore, to real property can be acquired, passed, and lost according to the *lex loci rei sitæ*.

Lex loci solutionis. The law of the place of payment.

Lex loquens. The speaking law. A living arbitrator. Usually applied to the king.

Lex manifesta. Open law; the making or wagging of law. See *Vadiatio legis*.

Lex mercatoria. The law merchant. Custom of merchants. The mercantile law.

Lex naturæ. Law of nature. See *Jus gentium*.

Lex necessitatis est lex temporis, i. e., instantis. The law of necessity is the law of time, i. e., of the moment.

Lex neminem cogit ad vana, seu impossibilia. The law obliges no man to do vain or impossible things. See *Lex non cogit...*

Lex neminem cogit ad vana seu inutilia peragenda. The law obliges no one to do vain or useless things. The law will not itself attempt to do an act which would be vain, *lex nil frustra facit*, nor to enforce one which would be frivolous.

Lex neminem cogit ostendere quod nescire præsumitur. The law compels no one to show that which he is presumed not to know. But when any fact is specially within the knowledge of any person, the burden of proving that fact is upon him (*Ind. Evi. Act I of 1872*, s. 106). See *Affirmanti...*

Lex nemini opratur iniquum, nemini facit injuriam. The law works harm to no one; does injury to no one.

Lex nil facit frustra; nil jubet frustra. The law does nothing vainly; commands nothing vainly.

Lex non à rege est violanda. The law is not to be violated by the king.

Lex non cogit ad impossibilia. The law forces not to impossibilities. The law does not compel a man to do that which he cannot possibly perform.

This is akin to the maxim of the Roman Law, *nemo tenetur ad impossibilia*, which, derived from common sense and equity, has been adopted and applied under various circumstances, e. g., to a contract by

charter party, where a legal performance has been rendered impossible by the outbreak of war (*The Tentonia*, L. R. 3 A. & E. 394).

The law in its most positive and peremptory injunctions, is understood to disclaim all intention of compelling to impossibilities, and the administration of the laws must adopt that general exception in the consideration of all particular cases. In the performance of that duty it has three points to which its attention must be directed. In the first place, it must see that the nature of the necessity pleaded be such as the law itself would respect, for there may be a necessity, which it would not. A necessity created by a man's own Act, with a fair previous knowledge of the consequences that would follow, and under circumstances which he had then a power of controlling, is of that nature. Secondly, that the party who was so placed, used all practicable endeavours to surmount the difficulties which already formed that necessity, and which on fair trial, he found unsurmountable. This does not mean all the endeavours which the wit of a man as it exists in the acutest understanding might suggest, but such as may reasonably be expected from a fair degree of discretion and in ordinary knowledge of business. Thirdly, that all this shall appear by distinct and unsuspected testimony, for the positive injunctions of the law, if proved to be violated, can give way to nothing but the clearest proof of the necessity that compelled the violation (*Per* Sir. W. Scott, *The Generous*, 2 Dods. 323).

If a person by his own contract absolutely engages to do an act, it is deemed to be his own fault and folly that he did not thereby expressly provide against contingencies, and exempt himself from responsibility in certain events; in such case, therefore, that is, in the instance of an absolute contract, the performance is not excused by an inevitable accident or other contingency, although not foreseen by, nor within the control of, the party (*Per* Lawrence, J., *Hadley v. Clarke*, 8 T. R. 267).

Where the performance of the condition of a bond becomes impossible by the act of the obligor, such impossibility forms no answer to an action on the bond (*Beswick v. Swindells*, 3 A. & E. 883), for in case of a private contract, a man cannot use as a defence an impossibility brought upon himself (*Reg. v. Caledonian R. Co.*, 16 Q. B. 28).

Where the condition for a promise is such that its performance is utterly and naturally impossible, such consideration is insufficient (*Chanter v. Leese*, 4 M. & W. 295; *Courtenay v. Strong*, 2 Ld. Raym. 1219), and the law will not notice an act the completion of which is obviously ridiculous and impracticable. In this case the maxim of the Roman Law applies *impossibilium nulla obligatio*.

A bequest or transfer upon a condition, the fulfilment of which is impossible, or would be contrary to law or morality is void (*Ind. Suc. Act X* of 1865, ss. 113 and 114; *Trans. of Pro. Act IV* of 1882, s. 25).

Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made (*Ind. Con. Act IX* of 1872, s. 36).

An agreement to do an act impossible in itself is void. A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. Where one person has promised to do something which he knew, or with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise (*Ibid.*, s. 56).

See *Acta Dei...*

Lex non curat de minimis. The laws cares not about trifles. See *De minimis*...

Lex non debet deficere conquerentibus in justitia exhibenda. The law ought not to be deficient in administering justice to the complainant. See *Ubi jus*...

Lex non deficit in justitia exhibenda. The law is not defective in administering justice.

Lex non exacte definit, sed arbitrio boni viri permittit. The law does not exactly define, but leaves to the judgment of an honest man. See *Discretio est*...

Lex non facit delicatorem votis. The law favours not the wishes of the dainty. In deciding whether an alleged nuisance should be restrained by injunction, the Court considers whether it is such as would materially inconvenience persons of ordinary, not fastidious, habits. The inconvenience must not be merely fanciful, but one materially interfering with the ordinary comfort, physically, of human existence, according to plain, sober, and simple notions of living. (*Walter v. Selfe*, 4 De G. & S. 135). Trifling inconveniences merely are not to be regarded. See *De minimis*...

As to the disturbance of a right to a prospect or to privacy, see *Sic utere tuo*...

Lex non intendit aliquid impossibile. The law intends not anything impossible.

Lex non patitur fractiones et divisiones statutorum. The law suffers no fractions and divisions of statutes.

Lex non præcipit inutilia, quia inutilis labor stultus. The law commands not useless things, because useless labour is foolish.

Lex non requirit verificari quod apparet curie. The law does not require that which is apparent to the Court to be proved or verified. See ss. 56, 57 and 58 of the Indian Evidence Act I of 1872. See *Perspicua vera*...

Lex non scripta. The unwritten or common law.

Lex ordinandi. The same as *Lex fori*.

Lex plus laudatur quando ratione probatur. The law is the more praised when it is approved by reason. See *Cessante ratione... Ubi eadem ratio*...

Lex posterior derogat priori. A latter law takes away the effect of a prior one. See *Leges posteriores*...

Lex prospicit, non respicit. The law looks forward and not backward. Statutes are not, as a rule, retrospective, unless they are expressly made so to operate. See *Nova constitutio*...

Lex punit mendacium. The law punishes a lie.

Lex purè penalis obligat tantum ad pœnam, non item ad culpam: lex penalis mixta et ad culpam obligat, et ad pœnam. The law purely penal binds only as to penalty, not as to fault; the mixed penal law compels both to fault and penalty.

Lex regia. A law proposed by the King.

Lex rejicit superflua, pugnantia, incongrua. The law rejects superfluous, contradictory and incongruous things.

Lex reprobat moram. The law dislikes delay.

Lex respicit æquitatem. The law pays regard to equity.

Lex sacramentalis. Purgation by oath.

Lex scripta. Written or statute law.

Lex scripta si cesset, id custodiri oportet quod moribus et consuetudine inductum est; et si quâ in re hoc defecerit, tunc id quod proximum et consequens ei est; et si id non appareat, tunc jus quo urbs Romana utitur servari oportet. If the written law be silent, that which is drawn from manners and customs ought to be observed, and if that is in any matter defective, then that which is next and analogous to it; and if that does not appear, then the law which Rome uses should be followed. In cases where there is no precedent of the English Courts, the Civil Law is often heard with respect and followed.

Lex semper dabit remedium. The law will always give a remedy. See *Ubi jus*...

Lex semper intendit quod convenit ratione. The law always intends what is agreeable to reason. See *Lex plus laudatur*...

Lex situs. See *Lex loci rei*...

Lex spectat naturæ ordinem. The law regards the order or course of nature. The law will not presume anything against nature. The Court may presume the existence of any fact likely to have happened, regard being had to the common course of natural

events, human conduct, and public and private business, in their relation to the facts of the particular case (*Ind. Ev. Act I of 1872, s. 114*).

Lex spiritualis. Law spiritual. The ecclesiastical law.

Lex succurrit ignorant. The law assists the ignorant. See *Ignorantia facti*...

Lex talionis. The law of retaliation. The law of requital in kind of an eye for an eye, a tooth for a tooth, &c. It was enacted by Stat. 37 Edw. III. c. 18, that such as preferred malicious accusation against others to the king's great council should be put in sureties of taliation, that is, should, if the suggestion be found untrue, incur the same pain that the other should have had if it had been true. But after one year's experience, this punishment of retaliation was rejected, and imprisonment adopted in its stead.

Lex terræ. The law and custom of the land.

Lex uno ore omnes alloquitur. The law speaks to all with the same mouth.

Lex vincit consuetudinem. The law abrogates customs (i. e., customs at variance with the law). See *Optimus interpret*...

Ley (or Loi). Leys. (Fr.) Law. Laws.

Ley-gager. Wager of law. See *Vadiatio legis*.

Libellus conventionis. (Rom. L.) The statement of the plaintiff's claim delivered to the defendant.

Libellus famosus. Infamous writing, printing, &c.; libel.

Libera batella. A free boat. Right of fishing.

Libera capella. Free chappel, i. e., exempt from the jurisdiction of the diocesan.

Libera chasea habenda. A judicial writ granted to a person for a free chase belonging to his manor, after proof that the same of right belonged to him.

Libera e persona. That the person be at liberty.

Libera lex. Liberam legem. Frank law. The benefit of the free and common law of the land. He who has lost, for any offence, his frank-law cannot attend any Court either to give evidence or for any other purpose.

Liberam legem amittere. To lose one's free-law. To become infamous and not to be accounted *liber et legalis homo*. See *Libera lex*.

Libera piscaria. Free fishery.

Liberate probanda. An ancient writ that lay for such as, being demanded as villeins, offered to prove themselves free; directed to the sheriff that he should take security of them for the proving of their freedom before the justices of the assize, and that in the meantime they should be unmolested. See *Nativo habendo*.

Liberati. At liberty; without restraint.

Liberatio. Money, meat, drink, clothes, &c., yearly given and delivered by the lord to his domestic servants.

Liberatio seisinæ. Livery of seisin.

Liber et legalis homo. A free and lawful subject. See *Legalis homo*.

Liber homo. (*Rom. L.*) A freeman, as distinguished from *libertinus*, a freedman.

Liber homo nūm amercietur pro parvo delicto, nisi secundum modum ipsius delicti, et pro magno delicto, secundum magnitudinem delicti; salvo contenemento suo; et mercator eodem modo, salva mercandisā; et villanus eodem modo amercietur, salvo wainagio suo. No freeman shall have amercement imposed upon him for a small offence, otherwise than according to the mode of his offence, and for a great offence, according to the magnitude of the offence; saving to the land-holder his contenement or land; to the trader, in the same manner, his merchandize; and a countryman, in the same manner, should be amerced, saving his wainage or team and instruments of husbandry.

Liber judicialis. Alfred's dome-book. A book composed under the direction of Alfred, for the general use of the whole kingdom, containing the local customs of the several provinces of the kingdom.

Liber judicarius. Domesday-book, made in the time of William, the Conqueror.

Liberos et legales homines. Free and lawful men. See *Legalis homo*.

Liberta pecunia non liberat offerentem. Money being restored does not set free the party offering.

No offence can be purged by any means other than the legal punishment awarded according to law. The restitution of stolen property, or a compromise entered into with the injured person, will not exonerate the offender from legal penalty; for the object of the criminal law is not so much the good of any particular individual, as the welfare of the whole public. But this does not affect offences which may be lawfully compounded under s. 345 of the Code of Criminal Procedure V of 1893.

Libertas ecclesiastica. Church liberty, or ecclesiastical immunity.

Libertas est naturalis facultas ejus quod cuique facere libet, nisi quod de jure aut vi prohibetur. Liberty is that natural faculty which permits every one to do anything he pleases except that which is restrained by law or by power.

Libertas est potestas faciendi id quod jure licet. Liberty is the power of doing that which the law permits.

Libertas est res inestimabilis. Liberty is an inestimable thing.

Libertates regales ad coronam expectantes ex concessione regum à coronâ exierunt. Royal

franchises relating to the crown have emanated from the crown by grant of kings.

Libertatibus allocandis. A writ lying for a citizen or burgess, impleaded contrary to his liberty, to have his privilege allowed.

Libertatibus exigendis in itinere. An ancient writ whereby the king commanded the Justices in eyre to admit of an attorney for the defence of another man's liberty.

Liber taurus. A free bull.

Liberum animum testandi. A free intention of making a will.

Liberum arbitrium. Free choice. Free will.

Liberum caput. A free person.

Liberum et commune socagium. Free and common socage.

Liberum maritagium. Frank marriage. A tenure in tail special where a man seised of land in fee-simple, gives it to another with his daughter, sister, &c., in marriage, to hold to them and their heirs.

Liberum socagium. Free socage.

Liberum tenementum. Frank or free tenement; freehold estate. This was formerly a usual plea of a defendant in action of trespass, alleging a general freehold title.

Licentia. A license; a power or authority given to a man to do some lawful act.

Licentia concordandi. Leave to agree. Formerly an actual suit was commenced at law for the recovery of possession of lands or other hereditaments agreed to be sold; and the possession gained by such composition was found to be so sure and effectual, that fictitious actions were commenced for the sake of obtaining the same security. As soon as the action was brought, the defendant, knowing himself to be in the wrong, was supposed to make overtures of peace and accommodation to the plaintiff, who accepted them. But the plaintiff having, upon suing out the writ, given pledges to prosecute the suit, applied to the Court for leave to make the matter up. This leave was readily granted, but for it a fine was due to the king by his prerogative which was called the king's silver or sometimes the *post fine*, as opposed to *primer fine*, which was levied on the institution of the suit. The *post fine* was as much as the *primer fine*, and half as much more, or ten shillings for every five mark of land.

Licentia loquendi. The liberty of speaking; time allowed to answer or plead.

Licentia surgendi. A license to arise. A liberty anciently given by the Court to a tenant to arise out of his bed, who was essoigned *de malo lecti* in a real action, and who, in such a case could not go out of his chamber till he was viewed by the persons appointed therefor. See *Essoin de malo*...

Licentiati in jure. Barristers, &c. Members of the legal profession.

Licentia transfretandi. A writ or warrant directed to the keeper of a sea-port, commanding him to let the persons therein named pass over sea.

Licet. It is lawful; although.

Licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio præcedens quæ sortiatur effectum, interveniente novo actu. Although a disposition of a future interest is void, yet it may become a declaration precedent taking effect upon the intervention of some new act.

The maxim relates to the acquisition of legal title. At law property non-existing, but to be acquired at a future time, is not assignable; but in equity it is. At law, although a power is given in the deed of assignment to take possession of after-acquired property, no interest is transferred, even as between the parties themselves, unless possession is actually taken, but, in equity, the moment the property comes into existence, the agreement operates upon it (*Per Lord Chelmsford, Holroyd v. Marshall*, 10 H. L. Cas. 191).

Accordingly, if a man purports to assign property, of which he is not the owner, the assignment, although it does not operate to pass the legal interest in the property, may yet operate as a contract by him to convey it upon his becoming the owner, and if the contract be for value, equity, treating as done that which ought to have been done, fastens upon the property, as soon as he has acquired it, and the contract to assign becomes in equity an assignment (*Collyer v. Isaacs*, 19 Ch. D. 342; *Re Clarke*, 36 *Ibid.* 848; *Tailby v. The Official Receiver*, 13 App. Cas. 523; *Specific Relief Act I of 1877*, s. 18 [a]). Such assignment, however, is an assignment of the equitable interest, and consequently, until the assignee has also acquired the legal interest, his position is precarious, for the equitable interest will be defeated if the legal interest be acquired by a third person for value and without notice of the equitable interest (*Joseph v. Lyons*, 15 Q. B. D. 280; *Hallas v. Robinson*, 15 *Ibid.* 268; *Specific Relief Act I of 1877*, s. 27 [b]).

When there is a contract for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts done, after the goods are produced in pursuance of the contract, by the seller or by the buyer with the seller's consent. A contract for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at the time of making the contract, and though, at that time, he has no reasonable expectation of acquiring them otherwise than by purchase (*Ind. Con. Act IX of 1872*, ss. 57 and 58).

Licet scæpius requisitus. Although often requested.

Licita bene miscentur, formula nisi juris obstat. Things permitted are properly joined, unless the form of law oppose.

Liege poustie. A state of health in contradistinction to death-bed. A person possessed of the lawful power (*legitima potestas*) of disposing, is said to be in *liege poustie*.

Ligamen. A band; a tie.

Ligan. Lagan. Goods sunk under water, but fastened to a buoy to save them from being lost.

Ligeantia est quasi legis essentia, est vinculum fidel. Allegiance is, as it were, the essence of law; it is the chain of faith.

Ligeantia naturalis nullis claustris coercetur, nullis metis refrænatur, nullis finibus premitur. Natural allegiance is restrained by no barriers, reigned by no bounds, compressed by no limits.

Limitatio. Limitation.

Linca recta semper præfertur transversali. The direct line is always preferred to the collateral. This is a rule of descent.

Liquere debet hominem esse interemptum. It ought to be clear that a man has been killed.

Lis. A suit; action; dispute.

Lis mota. The dispute having arisen. See *Post litem*...

Lis pendens. A suit pending. The pendency of another action between the same parties for the same cause of action might be set up by way of defence (*Code of Civ. Pro. XIV of 1882*, s. 12). See *Pendente lite*...

Lis sub judice. A disputed point submitted to the decision of an umpire and not yet settled.

Lit de justice. (Fr.) Bed of justice. The seat or throne upon which the king of France sat when personally present in parliament; hence it signified the parliament itself.

Lite pendente. While a suit is pending. See *Pendente lite*.

Litera attorney. Letters-of-attorney. A writing authorising another person to do any lawful act in the stead of the person executing it.

Literæ clausæ. Closed or private letters; writs close. See *Rotuli clausi*.

Literæ patentes. Open or public letters; letters patent.

Literæ patentes regis non erunt vacuæ. The king's letters patent shall not be void.

Literæ scriptæ manent. Written words last.

Litera scripta manet; vox emissa volat; vox audita perit. The written letter remains; words spoken pass away; words heard perish.

As a safeguard against the forgetfulness of human memory, it is necessary that every transaction creating any legal relation between parties must be reduced to writing. But the law in this country does not require that any agreement whether in regard to the transfer or creation of any

interest in land or otherwise should be in writing; nor does it distinguish between agreements under seal and by parol (*Krishna v. Rayappa*, 4 Mad. H. C. R. 98; *Ind. Suc. Act X* of 1865, s. 282; *Srinivasammal v. Vijayammal*, 2 Mad. H. C. R. 87; *Hurpurshad v. Sheo Dyal* L. R. 3 I. A. 259; *Mt. Rookho v. Madho Dass*, 1 N.-W. P. 159; *Vencataswamy v. Nullanna*, 3 Ind. Jur. 317; *Hurrish Chunder v. Rajendur*, 18 W. R. 293; *Meer Helalooddeen v. Chowdhury Abdul Suttar*, 9 W. R. 351).

But these rulings must be taken as subject to and modified by, any special provisions of law which require particular transactions to be in writing. S. 9 of the Transfer of Property Act IV of 1882 also provides that a transfer of property may be made without writing in every case in which a writing is not expressly required by law.

For transactions which are required to be in writing see the Transfer of Property Act IV of 1882, ss. 54, 59, 107 and 123 (Sales, mortgages, leases, and gifts); the Hindu Wills Act XXI of 1870, s. 2 (Wills and codicils in Bengal, and in the towns of Madras and Bombay); the Religious Societies Act I of 1880, s. 3 (Appointment of new trustees); the Indian Trusts Act II of 1882, s. 5 (Trusts of immoveable property); the Indian Limitation Act XV of 1877, ss. 19 and 20 (Acknowledgment of liability and part payment of principal); the Indian Contract Act IX of 1872, s. 25 (Agreement made without consideration); s. 28 (Contract to refer to arbitration any question which has already arisen); the Oudh Estates Act I of 1869, ss. 13, 16 to 20 (Bequests and transfers by Taluqdars); the Oudh Rent Act XXII of 1886, s. 153 (Registration of incumbrance created by under-proprietor); the Bengal Tenancy Act VIII of 1885, s. 12 (Voluntary transfer of permanent Tenure); s. 29 (Enhancement of rent by contract); the Code of Civil Procedure XIV of 1882, s. 39 (Appointment of pleader and revocation); s. 292 (Assignment of decree); the Indian Registration Act III of 1877, s. 32 (Power-of-attorney).

As to the mode of proving documents see ss. 59 to 92 of the Indian Evidence Act I of 1872.

Litis æstimatio. The measure of damages.

Litis contestatio. Joining issues in an action.

Litis nomen omnem actionem significat, sive in rem, sive in personam sit. A law suit signifies every action, whether it be *in rem* or *in personam*.

Litis pendence. The time during which a law suit is going on.

Litis renunciationem. (*Rom. L.*) The renunciation of a suit by the plaintiff.

Locare ad firmam. To let or set to farm.

Locatio. (*Rom. L.*) A letting or hiring. Also called *locatio conductio*; *locatio* expressing the letting out to hire, and *conductio*, the hiring.

Locatio custodiae. (*Rom. L.*) The hiring of care and services to be performed or bestowed on the thing delivered.

Locatio mercium vehendarum. A contract for the carriage of goods for hire.

Locatio navis. The letting or hiring of a ship.

Locatio operis faciendi. (*Rom. L.*) The hiring of work and labour.

Locatio operis mercium vehendarum. The hiring of the carriage of goods from one place to another.

Locatio rei. A letting, or setting to hire, of a thing.

Locatio vel conductio. A letting or hiring.

Loco citato. In the place or passage (of an author's work) quoted. Abbrev. *Loc. cit.*

Locum tenens. A deputy or substitute; a lieutenant. He who occupies the king's or any other person's place, or represents his person.

Locus contractus. The place of the contract.

Locus in quo. The place where any thing is alleged to be done in pleadings, &c.

Locus partitus. A division made between two towns or counties to make trial where the land or place in question lies.

Locus penitentiae. A place or chance of repentance; room for repentance. A power of drawing back from a bargain before any act has been done to confirm it in law, *i. e.*, before acceptance by the other party.

Locus pro solutione redditus aut pecunie secundum conditionem dismissionis aut obligationis est strictè observandus. The place for the payment of rent or money, according to the condition of a lease or bond, is to be strictly observed.

Locus regit actum. The place governs the act. The act is governed by the law of the place where it is done, *i. e.*, the validity of a legal transaction is, by international comity, usually governed by the law of the place where it was concluded. See *Lex fori*.

Locus sigilli. The place of the seal. The place reserved on the fair copy of a document for the seal of any party intended to execute the same. Abbrev. *L. S.* The initials (*L. S.*) are also used in a copy of a document, to indicate the place where the seal was in the original document.

Locus standi. A place for standing. The right of a party to appear and be heard on any given question before any Court of justice or before Parliament. It signifies a right to be heard, as opposed to a right to succeed on the merits.

Locus vastatus. A place spoiled or made waste.

Longa possessio est pacis jus. Long possession is the law of peace.

Longa possessio parit jus possidendi et tollit actionem vero domino. Long possession is like the right of possession and takes away

an action from the true owner. See *Possessio est quasi...* Also the Ind. Lim. Act XV of 1877, Sch. II, Arts. 134 to 144.

Longi temporis possessio. (Rom. L.) Possession for a long time. The phrase denotes adverse possession of immovable property. See *Usucapio*.

Longus testis protrahi potest. A lengthy witness can be drawn out.

Loquela. An impanance; a declaration.

Loquela sine die. A respite in law to an indefinite time.

Loquendum ut vulgus, sentiendum ut docti. Speak as the ordinary people, think as the learned.

Lou le ley done chose, la ceo done remedie a rener a ceo. Where the law gives a right, it gives a remedy to recover.

Lubricum lingua non facile trahendum est in penam. A slip of the tongue ought not lightly to be subjected to punishment.

Lucrativa causa (Rom. L.) A consideration which is voluntary, i. e., a gratuitous gift or such like. It was opposed to *onerosa causa*, which denoted a valuable consideration.

Lucri causâ. For the purpose of gain; by reason of profit.

Ludi vani. Unlawful games; playing at tables, dice, cards, &c.

Lupanar fornic. A bawdy-house; a house of ill fame.

Lupanatrix. A bawd or strumpet.

Lupinum caput gerere. To bear wolf's head. To be outlawed, and have one's head exposed, like a wolf's, with a reward to him who should take it. See *Caput lupinum*.

M.

Magis de bono quam de malo lex intendit. The law favours a good rather than a bad construction. Where the words used in a document are susceptible of two meanings, the one agreeable to, and the other against, the law, the former should be adopted. Thus, if a servant engages to do all things that his master directs him to do, this does not bind him to do things which are unlawful.

Magister. A master or ruler. A person who has attained some eminent degree in science.

Magister ad Facultates. Master of the Faculties. The Court of the Faculties was a Court under the Archbishop of Canterbury for granting privileges or special dispensations to persons. The *Master* was the chief officer thereof.

Magister Hospitii Regis. The master of the king's household.

Magister navis. The master of a ship.

Magister rerum usus; magistra rerum experientia. Use is the master of things; experience is the mistress of things.

Magister Rotulorum. Master of the Rolls.

Magister societatis. The manager of a partnership.

Magna centum. The great hundred, or six score.

Magna Charta (or *Carta*). The Great Charter of liberties, granted by king John in the year 1215.

Magna Charta et Charta de Forestâ sont appelés les deux grandes chartres. *Magna Charta* and the *Charta* of the Forest are called the two great charters.

Magna est veritas et prævalet. Truth is powerful and prevails.

Magnum concilium. The great council. This was the king's Court of Parliament (or *Aula Regis*) sitting without the Commons and exercising judicial functions.

Maihemium est homicidium inchoatum. Mayhem is incipient homicide.

Maihemium est inter crimina majora minimum; et inter minora maximum. Mayhem (maiming) is the least among great crimes; and the greatest among small ones.

Maihemium est membri mutilatio; it dici poterit, ubi aliquis in aliqua parte sui corporis effectus sit inutilis ad pugnandum. Mayhem is the mutilation of a member; and can be said to take place when a man is injured in any part of his body so as to be useless in fight.

Maison de Dieu. (Fr.) The house of God. A monastery, hospital, religious house, or alms house. See *Domus Dei*.

Majora regalia. The greater rights of the crown, such as regard the royal character and authority, as opposed to his *revenue*, which is comprised in the *minora regalia*.

Major hæreditas venit unicuique nostrum à jure et legibus quam à parentibus. A greater inheritance comes to every one of us from right and the laws than from parents.

Majori inest minus. The less is contained in the greater.

Majus dignum trahit ad se minus dignum. The more worthy draws to itself the less worthy. See *Omne majus...*

Majus est delictum seipsum occidere quam alium. It is a greater crime to kill one's self than another.

Majus et minus non variant speciem. Greater and less do not change the nature of a thing.

Majus jus. An old writ in some customary manors issued for directing the trial of a disputed right to land.

Mala corona. See *Corona mala*.

Mala fides. Bad faith, as opposed to *bonâ fides*, good faith.

Mala grammatica non vitiat chartum. Bad grammar does not vitiate a deed. The grammatical construction is not always, in

judgment of law, to be followed; and neither false English nor bad Latin makes a deed void when its meaning is apparent (*Osborne's Case*, 10 Rep. 133). Where, however, a proviso in a lease was altogether ungrammatical and insensible, the Court declared that they did not consider themselves bound to find out a meaning for it (*Doe v. Carew*, 2 Q. B. 317). See *Falsus orthographia*...

Mala in se. Things evil in themselves. See *Malum in se*.

Mala praxis. A bad practice. An improper or unskilful management of a case by a surgeon, physician, or apothecary, whereby a patient is injured; whether it be by neglect or for curiosity and experiment.

Mala prohibita. Mischiefs or evils forbidden or prohibited by law. See *Malum in se*.

Mal à propos. Unseasonably; improperly; ill-timed; out of place.

Maledicta expositio quæ corrumpit textum. It is a bad exposition which corrupts the text. In the interpretation of statutes, it would be dangerous to make a construction in any case against the express words, where the meaning of the makers is not opposed to them and when no inconvenience will follow from a literal interpretation. Nothing is more unfortunate than a disturbance of the plain language of the legislature by the attempt to use equivalent terms (*Everard v. Poppleton*, 5 Q. B. 184; *Gradsby v. Barrow*, 8 Scott. N. R. 804).

Maleficia non debent remanere impunita; et impunitas cotinuum affectum tribuit delinquenti. Evil deeds ought not to remain unpunished; and impunity affords continual incitement to the delinquent.

Maleficia propositis distinguuntur. Evil deeds are to be distinguished from evil purposes.

Maleficium. Waste; damage; injury.

Malfeasance. Bad acting; doing what is wrong.

Malitia. Malice.

Malitia præcogitata. Malice aforethought; malice prepense.

Malitia supplet ætatem. Malice makes up for age. Malice supplies the want of age. See *Doli capax. In omnibus pœnalibus*...

Malo animo. With an evil intent.

Malo grato. In spite; unwillingly.

Malum in se. Mischief or evil in itself. There is a distinction between *malum in se* and *malum prohibitum*. All offences at common law are generally *mala in se*, such as murder, robbery, perjury, &c., which are wrong in themselves whether prohibited by human laws or not, and which contract no additional turpitude from being declared unlawful by the legislature, as opposed to *mala prohibita*, which independently of the human law, are in themselves indifferent, and become right or wrong according as the legislature sees proper, such as playing at unlawful games, which is only a *malum*

prohibitum at certain places only, and not a *malum in se*.

Malum non habet efficientem, sed deficientem causam. Evil has not an efficient, but a deficient cause.

Malum non presumitur. Evil is not to be presumed.

Malum prohibitum. A mischief or evil forbidden or prohibited by law. See *Malum in se*.

Malum quo communius eo pejus. The more common an evil is, the worse.

Malus animus. Bad or fraudulent intention.

Malus in uno malus in omnibus. Bad in one respect, bad in all. See *Falsus in uno*...

Malus usus abolendus est. A bad custom or abuse should be abolished. A custom existing from time immemorial has the force of law; but if that custom be proved to be a bad one such proof will set it aside. A custom ought not to be opposed to the public good. See *Optimus interpretres*...

Malevis procureurs de douceins. Wrongful procurers of dozens, such as used to pack juries by the nomination of either party in a cause, or other practice.

Mancipia, quasi manu capti. Slaves, as if "caught by the hand."

Mandamus. We command. A high prerogative writ of a most extensive remedial nature. This is, in its form, a command issuing in the King's name from the Court of King's Bench, and directed to any person, corporation or inferior Court of judicature, requiring them to do some particular thing which appertains to their office and duty and which the Court holds to be consonant to right and justice. In its application it may be considered as confined to cases where relief is required in respect of the infringement of some public right or duty and where no effectual relief can be obtained in the ordinary course of an action. It enforces, however, some private rights when they are withheld by public officers. See the Specific Relief Act I of 1877, ss. 45 to 51.

Mandata licita strictam recipiunt interpretationem; sed illicita, latam et extensam. Lawful authority is to receive a strict interpretation; but an unlawful authority, a wide and extended interpretation.

Mandatarius. A mandatary; he to whom a charge is given.

Mandatarius terminos sibi positos transgredi non potest. A mandatary or agent cannot exceed the limits placed upon him.

Mandatum. A mandate; a bailment of goods without reward, to have something done to them, not merely for safe custody. He who so gives the employment is called the *mandator*; and he who accepts it, the *mandatarius*. Also a judicial command to have any thing done for despatch of justice.

Mandavi ballivo. I have commanded the bailiff. A return to a writ whereby a sheriff states that he has committed its execution to the bailiff.

Mandavi ballivo, qui nullum dedit responsum. I have commanded the bailiff, who has given no answer. A return to a writ by a sheriff, when he has committed it to the bailiff for execution, but the bailiff has not made a return.

Manerium. A manor.

Manifesta probatione non indigent. Things manifest do not stand in need of proof.

Mansueta, quasi manui assueta. Tamed, as if accustomed to the hand.

Mansueta naturæ. Of a tame nature, as opposed to *feræ naturæ*.

Mansum capitale. The manor-house, or court of the lord.

Manu captio. Mainprise. The taking or receiving of a person into friendly custody who otherwise might be committed to prison, upon security being given that he shall be forthcoming at a time and place assigned. To let one to mainprise is to commit him to those (called *manuceptores*) that undertake that he shall appear at the day appointed. Also a writ to let a prisoner to mainprise.

Manu forti. With a strong hand.

Manu propria. With one's own hand.

Manutententia. Maintenance. The unlawful taking in hand or upholding of a cause or person.

Maris et feminae conjunctio est de jure naturæ. The connection of male and female is by the law of nature.

Maritagio amisso per defaultam. A writ for a tenant in frank marriage to recover lands whereof he was deforced or deprived by another.

Maritagium. Marriage. Marriage goods; dowry; that which the wife brings the husband in marriage.

Maritagium est aut liberum aut servitio obligatum; liberum maritagium dicitur ubi donator vult quod terra sic dota quietæ sit et libera ab omni seculari servitio. A marriage portion is either free or bound to service; it is called frank marriage when the giver wills that the land thus given be exempt from all secular service.

Maritagium habere. To have the free disposal of an heiress in marriage; a favour granted by the kings of England while they had the custody of all wards or heirs in minority.

Maritagium servitio obligatum. This was where lands were given in marriage, with a reservation of the services to the donor, which the donee and his heirs were bound to perform for ever; but neither he nor the next two heirs, were obliged to do homage, which was to be done when it came to the

fourth degree, and then, and not before, they were required to be performed, both services and homage.

Mater familias. The mother or mistress of the family.

Materia prima. The first matter; the origin of matter.

Matrimonia debent esse libera. Marriages ought to be free.

Matrimonium. The inheritance descending to a man *ex parte matris* from his mother; as opposed to *patrimonium*, an hereditary estate or right descended from ancestors.

Matrimonium subsequens tollit peccatum præcedens. Subsequent marriage cures preceding criminality.

Matrix ecclesia. The mother church, *i. e.*, the cathedral, so called in relation to the parochial churches within the same diocese; or a parochial church in relation to chappels depending on it. Also called *primaria ecclesia*.

Matter in ley ne serra mise in bouche del jurors. Matter of law should not be put into the mouth of jurors.

Maturiora sunt vota mulierum quam verorum. The desires of women are more mature than those of men. Women arrive at maturity earlier than men.

Maxima ita dicta quia maxima est ejus dignitas, et certissima auctoritas, atque quod maxime omnibus probetur. A maxim is so called because its dignity is greatest, and its authority the most certain, and because universally approved by all.

Maximè festinum. Very prompt, as a remedy or redress *maximè festinum*. See *Festinum*.

Mayhem. The act of maiming. The violently depriving another of the use of a member proper for his defence in fight.

Mayhemvit. He has maimed.

Media. Middle.

Medietas advocacionis A moiety of the advowson.

Medietas linguæ. A moiety of tongue. See *De medietate*...

Meditatio fugæ. Meditation or intention of flying. See *In meditatione*...

Medium filum. Middle line or thread; centre. See *Aqua cedit solo*.

Medium impedimentum. (*Rom. L.*) Mid-impediment. Anything which intervenes between two events, and prevents the latter having a retrospective operation as regards the former.

Me judice. I being judge. In my opinion.

Melieur serra prize pour le roy. The best shall be taken for the king.

Melior dabit nomen rei. The better should give a name to a thing.

Meliorum conditionem ecclesie sue facere potest praelatus deteriore nequaquam. A bishop can make the condition of his own church better, but by no means worse.

Meliorum conditionem suam facere potest minor deteriore nequaquam. A minor can make his own condition better, but by no means worse. As a rule minors cannot enter into any contract except for necessities, nor do anything prejudicial to their interests, as they are not considered free agents acting for themselves.

All acts of the guardian of a Hindu infant which are such, as the infant might, if of age, reasonably and prudently do for himself, must be upheld when done for him by his guardian (*Temmakal v. Subbammal*, 2 Mad. H. C. R. 47; *Makundi v. Sarabsukh*, 6 All. 417).

Where a *de facto* guardian of certain minors executed a deed of sale, and duly applied the consideration money for the benefit of the property, and such transaction was found a necessary one, and beneficial to the minors, *Held*, that the mere fact that the manager was not *de jure* guardian would not invalidate the transaction (*Gunga Persad v. Phool Singh*, 10 B. L. R. 368, note).

See Also *Til Koer v. Roy Anund Kishore*, 10 C. L. R. 547).

Although a guardian of two minors may have power to manage or to make a partition of the estate, he has no authority to bind the estate of either of his wards by admission of previous transactions (*Suruj Mukhi Konwar v. Bhagwati* (10 C. L. R. 377)).

A minor is also protected by the law of Limitation (XV of 1877, s. 7).

See *Custos statum*...

Melior est conditio defendentis. The condition of the defendant is better. See *Favourabilioris rei*...

Melior est conditio possidentis, et rei quam actoris. The condition of the possessor is the better, and the condition of the defendant than that of the plaintiff. See *In æquali jure*...

Melior est conditio possidentis, ubi neuter jus habet. Where neither has a right, the condition of the possessor is the better. For, in order to oust the possessor, the plaintiff must prove affirmatively his own title; it is not sufficient to show that the defendant had no title. The plaintiff must succeed on the strength of his own title and not on the weakness of the title of the defendant. See *In æquali jure*... *Possessio est quasi*...

Melior est justitia vere praveniens, quam severe puniens. Justice truly preventing is better than severely punishing.

Melius est non habere titulum quam habere vitio eum. It is better to have no title than to possess one void or tainted.

Melius est omnia mala pati quam malo consentire. It is better to suffer every ill than to consent to ill.

Melius est petere fontes quam sectari rivulos. It is better to go to the fountain head than to follow the rivulets. This applies especially to quotations and extracts from celebrated judgments and authors.

Melius inquirendum. To enquire better. A writ that lieth for a second inquiry, where partial dealing was suspected, or where the former inquest was incomplete on the face of it.

Membrum pro membro. Limb for limb. The law of retaliation. See *Lex talionis*.

Memento. Remember.

Mendacium sibi ipsi imponere. To give the lie to himself.

Mendax in uno præsuntur mendax in alio. He who is false in one instance is presumed false in another. See *Falsus in uno*...

Mensâ et thoro. From bed and board. See *à mensâ*...

Mensis fationis (feonacionis). Fence-month or defence-month. A time during which deer in forests do fawn; when hunting them is unlawful. Also called *mensis prohibitionis* or *mensis vetitus*.

Mens testatoris in testamentis spectanda est. The testator's intention is to be regarded in his will. See *Benignâ faciendâ*...

Mensura domini regis. Mensura regalis. The measure or gauge of our lord the king. The royal standard measure, according to which all measures were to be made.

Mentiri est contra mentem ire. To lie is to go against the mind.

Meo periculo. A my own risk.

Mera noctis. Midnight.

Merces retinens. Retaining fee. A preliminary fee given to a counsel, along with the retainer, in order to ensure his advocacy.

Mero motu suo. Of his own accord. See *Ex mero*...

Merus idiota. A mere idiot; a pure idiot.

Mesne. Middle.

Messis sementem sequitur. The crop follows or belongs to the sower. This is a maxim of the Scotch Law. A tenant at will or sufferance, the duration of whose tenancy is uncertain, is, if the lessor suddenly determine the tenancy, entitled to emblements (*Trans. of Pro. Act IV of 1882, s. 108, [i]*). But a crop of natural grass growing at the time of the death of a tenant for life, and although fit to cut for hay, does not belong to his executor, but goes to the remainderman.

Meubles. (Fr.) The same as moveables of English law.

Meubles meublans. (Fr.) The utensils and articles of ornament usual in a dwelling-house.

Meum et tuum. Mine and thine.

Minatur innocentibus qui parcat nocentibus. He threatens the innocent who spares the guilty.

Minima pœna corporalis est major qualibet pecuniariâ. The smallest bodily punishment is greater than any pecuniary one.

Minimè mutanda sunt quæ certam habent interpretationem. Things which have a certain interpretation are to be altered as little as possible.

Minimum est nihilo proximum. The smallest is next to nothing.

Ministri regis. Ministers of the king. This includes judges of the realm, as well as those who have ministerial offices in the government.

Minor 17 annis non admittitur for executorem. A minor under seventeen years of age is not admitted to be an executor.

Minora crimina. Lesser crimes; misdemeanours.

Minor ante tempus agere non potest in casu proprietatis, nec etiam convenire; differetur usque ætatem; sed non cadit breve. A minor before majority cannot act in a case of property, not even agree; it should be deferred until majority; but the writ does not fail.

A minor is incapable of contracting (*Ind. Con. Act IX* of 1872, s. 11), but this does not affect the capacity of any person to act in the following matters, *viz.*—Marriage, Dower, Divorce, and Adoption; or the religion or religious rites and usages of any class of His Majesty's subjects in India (*Ind. Majority Act IX* of 1875, s. 2).

The contract of an infant is in most cases voidable at his election, though *quoad* an adult contracting with him it absolutely binds (*Holt v. Ward*, 2 Stra. 937).

An infant by reason of his tender years and presumed immaturity of judgment, is specially protected by law; for, although an infant may sue for breach of a contract entered into with him (*Warwick v. Bruce*, 2 M. & S. 205; 6 Taunt. 118).—as for a breach of promise of marriage (*Holt v. Ward*, *supra*)—yet where it is sought to recover damages against him by action *ex contractu* the fact of his infancy at the date of the contract will, in most cases, be pleaded in answer to such action. It must not, however, thence be inferred, that an infant labours under a total incapacity to contract—in other words that his contract is *void in toto*—it is in general *voidable* only (*Goode v. Harrison*, 5 B. & Ald. 147; *Corpe v. Overton*, 10 Bing. 252).

An infant may bind himself to pay for his necessary meat, drink, apparel, necessary physic, and such other necessities, and likewise for his good teaching or instruction, whereby he may profit himself afterwards (*Coope v. Simmons*, 7 H. & N. 707), but if he bind himself in an obligation

or other writing with a penalty for the payment of any of these, *that obligation shall not bind him* (*Fisher v. Mowbray*, 8 East, 330; *Baylis v. Dinely*, 3 M. & S. 477). See also s. 68 of the Ind. Con. Act IX of 1872.

See *Furiosus stipulare... Jus domicilii...*

Minora regalia. The minor rights or prerogatives of the crown, relating to the revenue. See *Majora regalia*.

Minor minorem custodire non debet; alios enim præsumitur male regere qui seipsum regere nescit. A minor cannot be guardian to a minor, for he is presumed to direct others badly who knows not how to direct himself.

Minor non habet legem. A minor cannot give evidence upon oath. See *Legem habere*.

Minor non tenetur respondere durante minori ætate; nisi in causâ dotis, propter favorem. A minor is not bound to reply during his minority; except as a matter of favour in a cause of dower.

Minor, qui infra ætatem 12 annorum fuerit, ullagari non potest, nec extra legem poni, quia ante talem ætatem, non est sub lege aliquâ, nec in decennâ. A minor who is under twelve years of age cannot be outlawed, nor placed without the law, because before such age he is not under any law nor in a decennary.

Minus sufficiens in literaturâ. Deficient in learning.

Minutiæ. Small matters.

Mise. Costs or expenses. See *Præ misis...*

Miserabile depositum. (*Rom. L.*) An involuntary deposit under pressing necessity; as in the case of a fire or ship-wreck when property is confided to any person whom the depositor may meet without proper opportunity for reflection or choice.

Misera est servitus ubi jus est vagum aut incognitum (or *incertum*). The slavery is wretched where the law is vague or unknown (or uncertain). In every good government the laws should be precisely defined and generally promulgated.

Misericordiâ. An arbitrary amercement or mulct set upon any person for an offence. If a man were outrageously amerced in a Court not of record, there was a writ called *moderata misericordiâ*, directed to the lord or his bailiff commanding him that they take moderate amercements. *Misericordiâ* sometimes means to be quit and discharged of all manner of amercements, which a person might incur in the forest.

Misericordiâ communis. A fine set on a whole country or hundred.

Misericordiâ domini regis est, quâ quis per juramentum legalium hominum de vicineto eatenus amercandus est, ne aliquid de suo honorabili contentemento amittat. The mercy of our lord the king is that by which every one is to be amerced by a jury of

good men from his immediate neighbourhood, lest he should lose any part of his own honourable tenement.

Misfeasance. A misdeed or trespass.

Missio in possessionem. Seizure of the goods of the debtor in satisfaction of the creditor's claim.

Mitior sensus. The more favourable sense or acceptance.

Mitius imperanti metius paretur. He is better obeyed who commands leniently.

Mitter le droit. To pass or transfer a right. To release a right.

Mitter l'estate. To pass an estate. A release by way of passing an estate, as when one of two co-parceners releases all his right to the other.

Mittimus. We send. A writ for removing and transferring of records from one Court to another. Also a precept in writing by a justice of the peace, directed to the gaoler, for the receiving and safe keeping of an offender until he is delivered by law.

Mittitur adversarius in possessionem bonorum ejus. It is sent against the goods in his possession.

Mettre à large. To set or put at liberty.

Mobilia ossibus inherant. Moveable property inheres in the bones of the owner, that is to say, follows his person or rather his domicile; and it is upon this maxim that the prevalence of the *lex domicilii* as regards personal property depends.

Mobilia sequuntur personam. Moveables (*i. e.*, furniture or things) follow the person. In accordance with this maxim, personal assets of an intestate are distributed according to the laws of the country where he is domiciled, not of that where they are situate. See *Jus domicilii*. *Mobilia ossibus...*

"It is a clear proposition" observed Lord Loughborough "not only of the law of England, but of every country in the world where law has the semblance of science. that personal property has no locality. The meaning of that is, not that personal property has no visible locality, but that it is subject to that law which governs the person of the owner, both with respect to the disposition of it, and with respect to the transmission of it, either by succession or by the act of the party; it follows the law of the person. The owner in any country may dispose of his personal property. If he dies, it is not the law of the country in which the property is, but the law of the country of which he was a subject, that will regulate the succession (*Sill v. Worwick*, 1 H. Bl. 690; 2 R. R. 816). The personal estate of a testator accompanies him wherever he may reside and become domiciled, so that he acquires the right of disposing of and dealing with it, according to the law of his domicile (*Dogliotti v. Crispin*, L. R. 1. H. L. 801). See the Ind. Suc. Act X of 1866, s. 5.

Moderatū misericordiā. See *Misericordia*. *Moderate castigavit.* He moderately corrected, *Modicam castigationem adhibere.* To use moderate chastisement.

Modo et formā. In manner and form. Words used in pleading, &c., and particularly in the answer of a defendant, whereby he denies to have done the thing laid to his charge *modo et formā declaratā*, in the manner and form as declared by the plaintiff. This shows that an allegation by the plaintiff must be shown true in every detail, not merely in its general effect. But this evasive kind of pleading is now abolished.

Modus. A measure; manner; custom.

Modus acquirendi. The mode or ground of acquiring

Modus derivandi. The manner of tithing.

Modus de non decimando non valet. An agreement not to take tithes avails not.

Modus et conventio vincunt legem. The form of agreement and the convention of parties overrule the law.

The conditions annexed to a grant or devise, the covenants inserted in a conveyance or lease, and the agreements whether written or verbal entered into between parties, have, when duly executed and perfected, and subject to certain restrictions, the force of law over those who are parties to such instruments or agreements. Express stipulations, if valid, prescribe the law *quoad* the contracting parties.

Parties to contracts are to be allowed to regulate their rights and liabilities themselves, and the Court will only give effect to the intention of the parties as it is expressed by the contract (*Per Erle, J., Stadhard v. Lee*, 3 B. & S. 372; *per Bramwell, B., Rogers v. Hadley*, 2 H. & C. 249; *Gott v. Gundy*, 23 L. J. Q. B. 1; 2 E. & B. 847). So in *Rombotham v. Wilson* (8 E. & B. 150; 8 H. L. Cas. 347), Martin, B., observed—"If the law of itself, under certain circumstances, protects from the consequences of an act, I think a man may contract for such protection in a case where the law of itself would not apply, *modus et conventio vincunt legem*."

In mercantile transactions, although a new partner cannot at law be introduced without the consent of every individual member of the firm (*Ind. Con. Act IX of 1872, s. 256, cl. G*), yet the executor of a deceased partner is entitled to occupy his place, if there be an express stipulation to that effect in the agreement of partnership. Again, the lien which bankers, factors, wharfingers, &c., have against any goods bailed to them, for a general balance of account, may be put an end to by an express stipulation to the contrary (*Per Lord Kenyon, Walker v. Birch*, 6 T. R. 232; *Brandao v. Barnett*, 12 Cl. & F. 787; 3 C.B. 519; *Misa v. Currie*, 1 App. Cas. 554; *Ind. Con. Act IX of 1872, s. 171*).

It does sometimes happen, notwithstanding an express agreement between parties, that particular circumstances present themselves, which afford grounds for the interference of a Court of equity, in order that the contract entered into may be so modified as to meet the justice of the case; such circumstances may be mutual mistake, misrepresentation, unconscientious advantage, and the like (*Specific Relief Act I of 1877, s. 26*).

The maxim, however, does not apply, where the express provisions of any law are violated by the contract, nor, in general, where the interests of the public, or of third parties, would be injuriously affected by its fulfilment. See *Pacta quæ contra... Privatorum conventio... Pactio privatorum... Ex dolo malo... Nulla pactione... Firmior et potentior...* So a clause which provides absolutely that a right under the contract shall not be enforceable by action is void as an attempt to oust jurisdiction (*Horton v. Sayer, 4 H. & N. 643; 29 L. J. Ex. 28; Ind. Con. Act IX of 1872, s. 28*). A stipulation by a mortgagee that he shall have the mortgaged property absolutely on the mortgagor's failing to redeem it at the stipulated time, is not enforced by a Court of equity, and the mortgagor is allowed to redeem the property by paying off the principal debt and the interest (till foreclosure), though the stipulated time for payment has been allowed to pass by (*Ramji bin Tukaram v. Chinto Sakharam, 1 Bom. H. C., A. C., 199; Nallana Gaundan v. Pakuni Gaundan, 2 Mad. H. C. R. 420; Venkata Reddi v. Parvati Ammal, (Ibid. 460)*).

See *Conventio vincit...*

Modus legem dat donationi. Custom gives law to the gift. Custom regulates the import of the donation. See *Cujus est dare...*

Modus levandi fines. The manner of levying fines.

Modus operandi. The manner of operation. The way or mode of proceeding, or of setting to work.

Molliter manus imposuit. He laid hands on him gently. A justification in an action for assault and battery, as where the plaintiff was unlawfully in the house of the defendant and the latter gently laid his hands on the plaintiff and removed him out of the house. Also used in other instances, as separating two persons fighting, in order to preserve the peace; so in the legal exercise of an office. A plea showing that no more violence was used to the plaintiff than was necessary.

Moneta abatauda. Money clipped or diminished in value.

Moneta est justum medium et mensura rerum commutabilium, nam per medium monetæ fit omnium rerum conventio et justa æstimatio. Money is the just medium and measure of commutable things, for by the

medium of money a convenient and just estimation of all things is made.

Monetundi jus comprehenditur in regalibus quæ nunquam à regio sceptro abdicantur. The right of coining money is included in those rights of royalty which are never separated from the kingly sceptre. See *Jura regalia*.

Monopolia dicitur, cum unus solus aliquod genus mercaturæ universum emit pretium ad suum libitum statuens. It is said to be monopoly when one person alone buys up the whole of one kind of commodity, fixing a price at his own pleasure.

Monstrans de droit. Showing of right. Manifestation or proof of right. A claim made against the Crown when the Crown is in possession of a title the facts of which are already set forth upon record. The judgment in a *monstrans de droit* or other proceeding against the Crown is called *amoveas manus* or *ouster-le-main*. See *Quod manus...*

Monstrans de faits ou records. Showing of deeds or records; which is where a party in an action shows to the Court a deed or record, in pursuance of an allegation, in his pleading, of the existence of such deed or record.

Monstraverunt. A writ which lay for tenants in ancient demesne, who held land by free charter, when they were distrained to do unto their lords other services and customs than they or their ancestors used to do, or when they were distrained for the payment of a toll, &c., contrary to their liberty which they enjoyed.

Mora. (Rom. L.) Delay. Neglect. A failure to pay a debt or perform a contract at the proper time. Thus a bailee of a chattel failing to return it at the time appointed is said to be *in mora*.

Mora debitoris non debet esse creditori damnosa. The delay of the debtor should not go to the damage of the creditor. Where delivery of goods has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have accrued but for such fault.

Mora reprobat in lege. Delay is reprobated in law. See *Vigilantibus...*

Moratur (or demoratur) in lege. He delays in law, i. e., he demurs; because the party goes not forward in pleading, but rests upon the judgment of the Court on a certain point as to the legal sufficiency of his opponent's pleading.

Morgue. (Fr.) A dead-house; a place in which persons found dead are laid to be owned by their friends or relatives.

Mors dicitur ultimum supplicium. Death is denominated the extreme penalty.

Mors omnia solvit. Death dissolves all things.

Mort civile. (Fr.) Civil death.

Mort d'ancestor. Death of an ancestor. Assise of *mort d'ancestor* was a writ which lay where a person's father, mother, brother, sister, uncle, aunt, &c., died, seised of land, and a stranger abated or intervened. Also called *assisa mortis antecessoris*. If the abatement happened on the death of one's grandfather or grandmother, then the assise of *mort d'ancestor* did not lie, but a writ of *ayle* or *de avo*; if, on the death of a great-grandfather or great-grandmother, then a writ of *besayle* or *de proavo*; but if it mounts one degree higher, to the *tresayle*, or grandfather's grandfather, or if the abatement happened upon the death of any collateral relation other than those before mentioned, the writ was called a writ of *cosinage* or *de consanguineo*.

Mortis causâ. In prospect of death.

Mortuum. Dead.

Mortuum vadium. A dead pledge: a pledge of lands or goods; better known as mortgage. This is where a man borrows of another a specific sum, e. g., £200, and grants him an estate in fee, on condition, that if he, the mortgagor, should repay the mortgagee, the said sum of £200 on a certain day mentioned in the deed, then the mortgagee shall re-convey the estate to the mortgagor. So called because if the mortgagor failed to repay the money on the day fixed, the land, in strictness of law, was gone from him for ever, and so *dead* to him; and if he paid it, the pledge was *dead* to the mortgagee. See *Vivum vadium*.

Mos pro lege. Usage for law. Long established usage will stand in the place of law.

Mos retinendus est fidelissimâ vetustatis. A custom of the truest antiquity is to be retained.

Mulieratus. A legitimate son; one begotten a *muliere* (of a wife), and not *ex concubinâ* (from concubinage).

Mulier puisné. The eldest legitimate son of a woman who, before marriage, was illicitly connected with his father. See *Bustard eigné*.

Multa conceduntur per obliquum, quæ non conceduntur de directo. Many things are obliquely or indirectly conceded which are not conceded directly.

Multa (or multura) episcopi. A fine anciently paid to the Crown by the bishops for the privilege of granting probate of wills and administration.

Multa in jure communi contra rationem disputandi, pro communi utilitate, introducta sunt. Many things contrary to the rule of argument (i. e., inconsistent with sound reason) are introduced into the Common Law for common utility. See *Ubi eadem ratio...*

Multa non vetat lex, quæ tamen tacitè damnavit. The law forbids not many things, which yet it has silently condemned,

Multi multa nemo omnia novit. Many men know many things; no one knows everything.

Multiplex et indistinctum parit confusionem; et questiones quo simpliciores, eo lucidiores. Multiplicity and indistinctness produce confusion; and questions, the more simple they are, are more lucid.

Multiplicitâ transgressionis crescat poena in pluri. The infliction of punishment increases with multiplied crime.

Multitudinem decem faciunt. Ten make a multitude.

Multitudo errantium non parit errori patrocinium. The multitude of those who err gives no excuse to the error.

Multitudo imperitorum perdit curiam. A multitude of ignorant persons destroys a court.

Multo fortiori. On much stronger grounds, With much stronger or greater reason.

Municipium. A free city or town.

Murdravit. He murdered. The word was used in indictments for murder.

Murdre. Murder; concealment.

Murdrum. The secret killing of another.

Murorum operatio. The service of work and labour done by inhabitants and adjoining tenants in building or repairing the walls of a city or castle.

Muta canum. A kennel; a pack of hounds. One of the things to which the king was entitled on a bishop's and abbot's death.

Mutatis mutandis. Changing what should be changed. With the necessary changes in points of detail.

Mutata forma, interimitur prope substantia rei. The form being changed, the substance of the thing is destroyed.

Mutato nomine. Changing the name.

Mutuatus. Borrowed; the act of borrowing.

Mutuo. To borrow or lend.

Mutus. Mute; dumb. One who cannot or refuses to speak. See *Peine forte...*

Mutus et surdus. Dumb and deaf. Deaf and dumb.

Mutuum. A loan whereby an absolute property in the thing let passes to the borrower, it being for consumption; and he is bound to restore, not the same thing, but an equivalent in things of the same kind. See *Frangibiles res*.

N

Namatio. The act of distraining.

Nam forisfecit amicos suos. For he has forfeited his friends. Applied to an outlaw, who was called a *friendless man*.

Namium. A distress; a pledge.

Namium vetitum. An unjust taking of the cattle of another and driving them to an unlawful place pretending damage done by

them. In which case the owner of the cattle may demand satisfaction for the injury, which is called *placitum de namio etitio*.

Nam que haret in litera haret in cortice. He who considers merely the letter of an instrument, goes but skin-deep into its meaning.

Narratio. A declaration; a count.

Nativi. Bondmen; strictly persons born servants, as opposed to bondmen by contract. Sing. *Nativus*.

Nativi conventionarii. Bondmen by contract or agreement.

Nativi de stipite. Bondmen by birth or descent.

Nativitas. Bondage or villenage.

Nativo habendo. A writ for the apprehension of a villein or bondman who had run away from his lord.

Natura appetit perfectum; ita et lex. Nature desires perfection; so also law.

Natura vis maxima; natura bis maxima. The force of nature is greatest; nature is doubly greatest.

Naturale est quidlibet dissolvi eo modo quo ligatur. Every thing is naturally dissolved in the same manner in which it is bound. See *Nihil tam conveniens*...

Naturalis affectio. Natural affection.

Naturalis obligatio. A moral obligation, as opposed to a legal obligation which was called *civilis obligatio*. It is not sufficient to support an action.

Natura non facit saltrum; ita nec lex. Nature takes no leap; so neither does law.

Natura non facit vacuum, nec lex supervacuum. Nature makes no vacuum; law no super-vacuum.

Navium detentio. A stop, stay or arrest upon ships or merchandize, by public authority.

Ne admittas. Do not admit him. A prohibitory writ which lay for the plaintiff or defendant in a *quare impedit*, or a *darrein presentment*, to restrain the bishop from admitting the clerk of a rival patron until the contention be determined. Now obsolete.

Ne baila pas. He has not delivered.

Necessarium est quod non potest aliter se habere. That which is necessary cannot be otherwise.

Necessitas culpabilis. A blamable necessity; a culpable extremity, e. g., killing a man in self-defence under necessity.

Necessitas est lex temporis et loci. Necessity is the law of time and place.

Necessitas excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus. Necessity excuses or extenuates a delinquency in capital cases, which has not the same operation in civil causes.

Necessitas facit licitum quod alias non est licitum. Necessity makes that lawful which otherwise is not lawful.

Necessitas inducit privilegium quoad jura privata. Necessity gives a privilege with reference to private rights.

"Necessity" said Lord Bacon "is of three sorts; necessity of conservation of life; necessity of obedience; and necessity of the act of God or a stranger."

As to the right of private defence of person or property, see ss. 96 to 106 of the Ind. Penal Code XLV of 1860. S. 106 of the Code provides that if, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk. But if two persons be shipwrecked together, and one of them, to escape death from hunger, kill the other for the purpose of eating his flesh, he is guilty of murder; and it is no defence that, when he did the act, he believed, upon reasonable grounds, that he had no other means of preserving his life (*Reg. v. Dudley*, 14 Q. B. D. 273; 54 L. J. M. C. 32), for it is certainly not law that a man may, under such circumstances, save his life by killing an unoffending person. It might as well be suggested that hunger is an excuse for theft; but the law is plainly otherwise.

The duty of obeying existing laws often furnishes excuse for an act, which of itself would be culpable, *ejus nulla culpa est cui parere necesse sit*. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact, and not by reason of a mistake of law, in good faith, believes himself to be bound by law to do it (*Ind. P. C. XLV of 1860, s. 76*). See also ss. 77 to 79 of the Code.

The actions of a third person do not, as a rule, afford defence for an act in itself criminal, unless they are of such a nature as to make it strictly involuntary on the part of the doer. Except murder and offences against the State, punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided the person doing the act did not, of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint (*Ind. P. C. XLV of 1860, s. 94*). The moral force of another is no excuse for a crime, for no one is bound to commit an offence. When consent to an agreement is caused by coercion, undue influence, &c., the agreement is voidable at the option of the party whose consent was so caused (*Ind. Con. Act IX of 1872, ss. 15, 16 and 19*).

Necessitas non habet legem. Necessity has no law.

Necessitas publica major est quam privata. Public necessity is greater than private. Public welfare is of greater importance than private necessity. See *Salus populi...*

Necessitas quod cogit, defendit. Necessity defends what it compels. Necessity which compels the performance of an act, indemnifies the result. See *Necessitas inducit...*

Necessitas sub lege non continetur, erga eam alias non est licitum necessitas, &c. &c. Necessity is not restrained by law, since what otherwise is not lawful necessity makes lawful.

Necessitas vincit legem; legum vincula irridet. Necessity overcomes law; it derides the fetters of law.

Nec tempus nec locus occurrit regi. Neither time nor place affects the king. See *Nullum tempus...*

Nec veniam effuso sanguine, casus habet. Where blood is spilled, the case is unpardonable.

Nec venium, leso numine, casus habet. Where the Divinity is insulted the case is unpardonable. See ss. 295 to 298 of the Ind. P. C. XLV of 1860. The original framers have made these observations on s. 298:—"In framing this clause we had two objects in view. We wish to allow all fair latitude to religious discussion, and at the same time to prevent the professors of any religion from offering, under the pretext of such discussion, intentional insults to what is held sacred by others. We do not conceive that any person can be justified in wounding, with deliberate intention, the religious feelings of his neighbours by words, gesture or exhibition. A warm expression dropped in the heat of controversy, or an argument urged by a person, not for the purpose of insulting and annoying the professors of a different creed, but in good faith for the purpose of vindicating his own, will not fall under the definition contained in this clause."

Nec vi, nec clam, nec precario. Neither by force, nor clandestinely, nor by permission, i. e., peaceably, openly and as of right. The manner of acquiring an easement, or property by prescription. See the Ind. Easement Act V of 1882, s. 15, and the Ind. Limit. Act XV of 1877 s. 26.

Ne deficiat justitia. Let justice fail.

Ne disturba pas. He did not disturb. When a person claiming as patron brings an action of the nature of *quare impedit*, alleging that the bishop has instituted the clerk of a rival patron, the bishop or such clerk may plead *ne disturba pas*, that he has done nothing to obstruct the right of presentation claimed by the plaintiff.

Ne dona pas, or Non dedit. He did not give. The form of pleading the general issue in a writ of formadon, by which the tenant denied the gift to have been made in manner and form as alleged.

Ne episcopi secularium placitorum officium suscipiant. That the bishops do not usurp the office of secular pleas.

Ne exeat regno. That he leave not the kingdom. A writ issuing out of Chancery to restrain a person from going out of the kingdom without the king's license, although his usual residence is in foreign parts. It is granted on motion supported by affidavit showing that a sum of money is due from the defendant to the plaintiff, and that the defendant intends to abscond. The writ was formerly applied to great political purposes.

Ne faciat vastum vel estrepementum pendente placito dicto indiscusso. That he commit not waste or destruction pending the said suit.

Nefas. Injustice; wrong.

Negatio conclusionis est error in lege. The negative or denial of a conclusion is an error in law.

Negatio destruit negationem et amba faciunt affirmativum. A negative destroys a negative, and both make an affirmative.

Negatio duplex est affirmatio. A double negative is an affirmative.

Negativa pregnans. Negative pregnant. A negative implying also an affirmative, as if a man being impleaded to have done a thing on such a day, or in such a place, denieth that he did it *modo et forâ declarata*, in the manner and form as alleged, which implieth, nevertheless, that in some sort he did it. A negative pregnant is a fault in pleading, for the meaning of such a form of expression is ambiguous.

Negligentia semper habet infortunium comitem. Negligence always has misfortune for a companion.

Negotiorum gestor. (Rom. L.) A person who spontaneously, and without the knowledge or consent of the owner, intermeddles with his property, as to do work on it, or to carry it to another place, with the object of benefiting the owner. The *negotiorum gestor* was entitled, by the Roman Law, to recover compensation for his trouble; and this is so by the law of England in cases of salvage and in some other cases. See the Ind. Con. Act IX of 1872, s. 70.

Ne injuste vexes. That you do not unjustly harass or distrain. A writ which lay for a tenant that was distrained by his lord for services to which he was not bound. The writ was a prohibition to the lord commanding him not to distrain. Now obsolete.

Ne lites immortalis essent dum litigantes mortales sunt. Let not strife be immortal, while those who strive are mortal.

Ne luminibus officiatur. (Rom. L.) That there be no obstruction to the lights. An expression for easement or servitude of light and air, whereby a person was entitled to prevent his neighbour from building so as to interfere with his lights.

Nemine contradicente. No one contradicting, i. e., unanimously. A phrase used with special reference to votes and resolutions of the House of Commons; *nemine dissentiente*, being the corresponding expression as to unanimous votes of the House of Lords. Abbrev. *Nem. con.*

Nemine dissentiente. See *Nemine contradicente*. Abbrev. *Nem. dis.*

Neminem oportet esse sapientorem legibus. No man, out of his own private reason, ought to be wiser than the laws.

Nemo admittendus est inhabilitare seipsum. Nobody is to be admitted to incapacitate himself.

Nemo ad regem appellet pro aliqua lite, nisi jus domi consequi non possit. Si jus namis severum fit, allevatio deinde queratur apud regem. No person should appeal to the king in any suit, unless he cannot obtain his right at home. If the law enacted be too severe, then the king may be applied to for relief.

Nemo agit in seipsum. No one acts against himself. No one impleads himself. A man cannot be at once an actor (plaintiff) and reus (defendant) in a legal proceeding.

Nemo aliquam partem recte intelligere potest antequam totum iterum atque iterum perlegerit. No one is able rightly to understand one part before he has again and again read through the whole. See *Noscitur a sociis. Ex antecedentibus...* See the Ind. Suc. Act X of 1865, s. 69.

Nemo allegans suam turpitudinem audiendus est. (Rom. L.) No one alleging his own baseness ought to be heard. See *Nullus commodum...*

He who comes into equity must come with clean hands. Where an infant, fraudulently concealing his age, obtained from his trustees part of a sum of stock to which he was entitled on coming of age; and when of age a few months after, he applied for and received the residue of such stock, and then afterwards instituted a suit to compel the trustees to pay over again the portion of the stock which had been improperly paid during his minority, held, that neither the infant nor his assignees could enforce payment over again of the stock paid during the minority (*Overton v. Banister*, 3 Hare 503; *Salvage v. Foster*, 9 Mod. 35; *Nelson v. Stocker*, 4 DeG. & Jo. 458).

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A sum of money was advanced to a minor on a mortgage of house property, on his representation that he was of age, and the

mortgagee was deceived by such false representation. Held, that the mortgagee was entitled to a mortgagee-decree against the property of the infant (*Saratchand v. Mohun Bibi*, 25 Cal. 371; distinguishing and doubting *Dhanmull v. Ram Chunder*, 24 Cal. 265, and applying *Nelson v. Stocker*, 4 DeG. & Jo. 458).

The general law of estoppel as enacted by s. 115 of the Evidence Act (I of 1872) will not apply to an infant, unless he has practised fraud operating to deceive. A Court administering equitable principles will deprive a fraudulent minor of the benefit of a plea of infancy; but he who invokes the aid of the Court must come with clean hands, and must establish, not only that a fraud was practised on him by the minor, but that he was deceived into action by the fraud. *Ganesh Lala v. Bapu* (21 Bom. 198) dissented from. *Sarat Chunder v. Gopal Chunder* (20 Cal. 296), *Mill v. Fox* (L. R. 37 Ch. D. 153), *Wright v. Snow*, (2 DeG. & S. 321) and *Nelson v. Stocker* (4 DeG. & Jo. 458) discussed.—*Dhurmo Dass Ghose v. Brahmo Dutt* (25 Cal. 616).

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Nemo debet bis vexari pro eadem causa. No person should be twice disturbed for the same cause.

The maxim means that no one is to be a second time troubled with litigation or criminal prosecution in respect of one and the same matter (civil or criminal).

As regards civil demands, the maxim lies at the basis of the plea of *res judicata*, the general rule being, that the judgement of a Court of concurrent jurisdiction directly upon the point is, as a plea, a bar, or as evidence, conclusive between the same parties upon the same matter directly in question in another Court. See ss. 13 and 12 of the Code of Civ. Pro. XIV of 1882.

Necessitas non habet legem. Necessity has no law.

Necessitas publica major est quam privata. Public necessity is greater than private. Public welfare is of greater importance than private necessity. See *Salus populi...*

Necessitas quod cogit, defendit. Necessity defends what it compels. Necessity which compels the performance of an act, indemnifies the result. See *Necessitas inducit...*

Necessitas sub lege non continetur, quia quod alias non est licitum necessitas facit licitum. Necessity is not restrained by law, since what otherwise is not lawful necessity makes lawful.

Necessitas vincit legem; legum vincula irridet. Necessity overcomes law; it derides the fetters of law.

Nec tempus nec locus occurrit regi. Neither time nor place affects the king. See *Nullum tempus...*

Nec veniam effuso sanguine, casus habet. Where blood is spilled, the case is unpardonable.

Nec veniam, læso numine, casus habet. Where the Divinity is insulted the case is unpardonable. See ss. 295 to 298 of the Ind. P. O. XLV of 1860. The original framers have made these observations on s. 298:—"In framing this clause we had two objects in view. We wish to allow all fair latitude to religious discussion, and at the same time to prevent the professors of any religion from offering, under the pretext of such discussion, intentional insults to what is held sacred by others. We do not conceive that any person can be justified in wounding, with deliberate intention, the religious feelings of his neighbours by words, gesture or exhibition. A warm expression dropped in the heat of controversy, or an argument urged by a person, not for the purpose of insulting and annoying the professors of a different creed, but in good faith for the purpose of vindicating his own, will not fall under the definition contained in this clause."

Nec vi, nec clam, nec precario. Neither by force, nor clandestinely, nor by permission, i. e., peaceably, openly and as of right. The manner of acquiring an easement, or property by prescription. See the Ind. Ease. Act V of 1882, s. 15, and the Ind. Limit. Act XV of 1877 s. 26.

Ne deficiat justitia. Lest justice fail.

Ne disturba pas. He did not disturb. When a person claiming as patron brings an action of the nature of *quare impedit*, alleging that the bishop has instituted the clerk of a rival patron, the bishop or such clerk may plead *ne disturba pas*, that he has done nothing to obstruct the right of presentation claimed by the plaintiff.

Ne dona pas, or Non dedit. He did not give. The form of pleading the general issue in a writ of formadon, by which the tenant denied the gift to have been made in manner and form as alleged.

Ne episcopi sæcularium placitorum officium suscipiant. That the bishops do not usurp the office of secular pleas.

Ne exeat regno. That he leave not the kingdom. A writ issuing out of Chancery to restrain a person from going out of the kingdom without the king's license, although his usual residence is in foreign parts. It is granted on motion supported by affidavit showing that a sum of money is due from the defendant to the plaintiff, and that the defendant intends to abscond. The writ was formerly applied to great political purposes.

Ne faciat vastum vel estrepementum pendente placito dicto indisco. That he commit not waste or destruction pending the said suit.

Nefas. Injustice; wrong.

Negatio conclusionis est error in lege. The negative or denial of a conclusion is an error in law.

Negatio destruit negationem et amba faciunt affirmativum. A negative destroys a negative, and both make an affirmative.

Negatio duplex est affirmatio. A double negative is an affirmative.

Negativa pregnans. Negative pregnant. A negative implying also an affirmative, as if a man being impleaded to have done a thing on such a day, or in such a place, denieth that he did it *modo et forâ declarata*, in the manner and form as alleged, which implieth, nevertheless, that in some sort he did it. A negative pregnant is a fault in pleading, for the meaning of such a form of expression is ambiguous.

Negligentia semper habet infortunium comitem. Negligence always has misfortune for a companion.

Negotiorum gestor. (*Rom. L.*) A person who spontaneously, and without the knowledge or consent of the owner, intermeddles with his property, as to do work on it, or to carry it to another place, with the object of benefiting the owner. The *negotiorum gestor* was entitled, by the Roman Law, to recover compensation for his trouble; and this is so by the law of England in cases of salvage and in some other cases. See the Ind. Con. Act IX of 1872, s. 70.

Ne injuste vexes. That you do not unjustly harass or distrain. A writ which lay for a tenant that was distrained by his lord for services to which he was not bound. The writ was a prohibition to the lord commanding him not to distrain. Now obsolete.

Ne lites immortales essent dum litigantes mortales sunt. Let not strife be immortal, while those who strive are mortal.

Ne luminibus officiatur. (*Rom. L.*) That there be no obstruction to the lights. An expression for easement or servitude of light and air, whereby a person was entitled to prevent his neighbour from building so as to interfere with his lights.

Nemine contradicente. No one contradicting, i. e., unanimously. A phrase used with special reference to votes and resolutions of the House of Commons; *nemine dissidente*, being the corresponding expression as to unanimous votes of the House of Lords. Abbrev. *Nem. con.*

Nemine dissidente. See *Nemine contradicente*. Abbrev. *Nem. dis.*

Neminem oportet esse sapientorem legibus. No man, out of his own private reason, ought to be wiser than the laws.

Nemo admittendus est inhabilitare seipsum. Nobody is to be admitted to incapacitate himself.

Nemo ad regem appellet pro aliquâ lite, nisi jus domi consequi non possit. Si jus namis severum fit, allevatio deinde quærat apud regem. No person should appeal to the king in any suit, unless he cannot obtain his right at home. If the law enacted be too severe, then the king may be applied to for relief.

Nemo agit in seipsum. No one acts against himself. No one impleads himself. A man cannot be at once an actor (plaintiff) and reus (defendant) in a legal proceeding.

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As regards civil demands, the maxim lies at the basis of the plea of *res judicata*, the general rule being, that the judgment of a Court of concurrent jurisdiction directly upon the point is, as a plea, a bar, evidence, conclusive between the parties upon the same matter directly in question in another Court. See ss. 13 and 14 of the Code of Civ. Pro. XIV of 1882.

As regards criminal prosecutions, the maxim lies at the basis of the plea of *autrefois acquit*, it being also well established in the criminal law, that when a man is indicted for an offence, and acquitted, he cannot afterwards be indicted for the same offence, provided the first indictment was such that he could have been lawfully convicted upon it by proof of the facts contained in the second indictment. See s. 403 of the Code of Crim. Pro. V of 1898.

The leading case on this subject is the *Duchess of Kingston's Case* (20 Howell, St. Tr. 537; 2 Sm. L. C., 10th Edn., 713). In this case, the Duchess, being indicted for bigamy, sought to rely upon a sentence against her marriage with her husband, pronounced in a suit between them for jactitation of marriage (*jactitationis matrimonii causa*); this sentence had been obtained by fraud and collusion, and the Judges were unanimously of opinion that proof that it had been so obtained wholly destroyed the effect of such sentence. The following points were resolved in this case:—(1) The judgment of a Court of concurrent jurisdiction *directly* upon the point, is, as a plea, a bar, or, as evidence, conclusive between the same parties, upon the same matter, *directly* in question in another Court; (2) The judgment of a Court of exclusive jurisdiction, *directly* upon the point, is, in like manner, conclusive upon the same matter, between the same parties coming *incidentally* in question in another Court for a different purpose; (3) But neither the judgment of a Court of concurrent or exclusive jurisdiction is evidence of any matter which came *collaterally* in question, though within the jurisdiction, nor of any matter *incidentally* cognizable, nor of any matter to be *inferred* by argument from the judgment.

The maxim can never be relied upon where the former proceedings were fraudulent and collusive (*Ibid.*; *Girdlestone v. Brighton Aquarium Co.*, 3 Ex. D. 137; & *Ibid.* 107; *Ind. Evi. Act I of 1872*, s. 44).

Nemo debet bis vexari, si constat curia quod sit pro una et eadem causa. No man should be twice disturbed, if it appear to the Court that it is for one and the same cause.

Nemo debet esse judex in propria causa. No one can be a judge in his own cause.

It is a rule observed in practice, that where a judge is interested in the result of a cause, he cannot, either personally or by deputy, sit in judgment upon it (*Brookes v. Earl of Rivers*, Hardw. 503; *Earl of Derby's Case*, 12 Rep. 114; *Anon.*, 1 Salk. 396; *Worsley v. S. Devon R. Co.*, 16 Q. B. 539).

A leading case under this maxim is *Dimes v. Grand Junction Canal Co.* (3 H. L. Cas. 759) where the House of Lords held that the decrees of Lord Cottonham in favour of the canal company were voidable and must

be reversed on the ground that when he made the decrees he was a shareholder of the company and this fact was unknown to the other parties to the suit. Lord Campbell observed—"It is of the last importance that the maxim that 'no man ought to be a judge in his own cause' should be held sacred. And that is not to be confined to a cause in which he is a party, but applies to a cause in which he has an interest. We have again and again set aside proceedings in inferior tribunals, because an individual, who had an interest in a cause, took a part in the decision."

Any direct pecuniary interest, however small, in the subject matter of inquiry will disqualify a judge (*Reg. v. Rand*, L. R. 1 Q. B. 232; *Reg. v. Gaisford*, 1892, 1 Q. B. 381; *Queen v. Bholanath Sen*, 2 Cal. 23; 25 W. R. 57), and any interest, though not pecuniary, will have the same effect, if it be sufficiently substantial to create a reasonable suspicion of bias (*Allison v. Gen. Council of Medical Education*, 1894, 1 Q. B. 750; *Reg. v. Burton*, 1897, 2 Q. B. 468; *Reg. v. Huggins*, 1895, 1 Q. B. 563). A judge, however, is not disqualified from adjudicating upon a summons against a ratepayer in arrear merely because he is a member of the town council, whose officer took out the summons (*R. v. Handsley*, 8 Q. B. D. 383; 51 L. J. M. C. 137). See also ss. 556 and 487 of the Code of Crim. Pro. V of 1898.

If the judge has any legal interest in the decision of the question, he is disqualified, no matter how small the interest may be. The law, in laying down the strict rule, has regard not so much perhaps to the motives which might be supposed to bias the judge as to the susceptibilities of the litigant parties. The object is to clear away everything which might engender suspicion and distrust of the tribunal, and so promote the feeling of confidence in the administration of justice (*Sergeant v. Dale*, 2 Q. B. D. 558).

In *Government of Bengal v. Hira Lal Dass* (8 B. L. R. 422; 17 W. R. 39), Peacock, C. J., observed—"The interest which disqualifies a judge is not merely a pecuniary interest: that would be too limited a way of describing such an interest; but in describing it we ought rather to use the language of Norman, J., in the case of *Queen v. Mookta Singh* (13 W. R. 60; 4 B. L. R. 14), that is to say 'a personal or pecuniary interest.' A magistrate could not try a person for an assault upon himself; and without defining precisely what amounts to personal interest, it appears to me that there must be either a personal or pecuniary interest in order to disqualify a Judge or Magistrate from exercising the general jurisdiction which is conferred upon him. It is not a question of want of jurisdiction so much as a disability arising from interest to exercise his jurisdiction in the particular case."

The interest which at common law disqualifies an officer from acting in a judicial

inquiry must be direct and certain, and not merely remote or contingent (*Queen v. Manchester S. and L. R. Co.*, 2 Q. B. D.336).

The mere circumstance that the complainant was the servant of the Magistrate would not deprive the latter of jurisdiction although generally it would be expedient to refer the case for trial by some other Magistrate (*In the matter of Basapa*, 9 Bom. 172).

But where the accused was convicted of reckless and furious driving, and the complainant was a servant of the Magistrate and it appeared that the Magistrate's wife was driving in a dog-cart on the thoroughfare when the tonga driven by the accused passed by, *held*, that the Magistrate was incompetent to try the case as he was "personally interested" in it under s. 555 of the Code of Crim. Pro. X of 1832 (*Queen-Empress v. Sakadev*, 14 Bom. 572).

The accused was tried and convicted before the District Magistrate for having disobeyed an order of the Municipal Commissioners under the Bengal Municipal Act, 1876. The Magistrate was present as Chairman of the Municipal Commissioners at the meeting when the order was passed, for disobedience of which the accused was convicted. *Held*, that the conviction was illegal and must be set aside (*Kharak Chand Pal v. Tarack Chunder*, 10 Cal. 1080; following *Sergeant v. Dale*, 2 Q. B. D. 558). See also *Nobin Krishna v. Chairman of Suburban Municipality*, 10 Cal. 194, and *Municipality of Benares v. B. shen Chand* (All. W. N., 1886, p. 291).

In certain cases of contempt of Court, however, the Court (whether it is a Civil, Criminal or Revenue Court) can take cognizance of the offence and sentence the offender (*Crim. Pro. Code V of 1893*, s. 480).

A Collector, appointed administrator of the estate of a minor defendant under Act XX of 1861, may lawfully be appointed to conduct the execution sales of the minor's property, though s. 321, taken in connection with s. 305, and ss. 322 to 327 inclusive, of the Code of Civil Procedure, 1877, impose on him judicial duties. Although it is a maxim of law that no man shall be a judge in his own cause, yet it is competent to the Legislature to overrule it in particular cases. (*Mehta Samul v. Pirzada*, P. J., 1880, p. 285).

Nemo debet ex alienâ jacturâ lucrari. No person ought to gain by another person's loss.

Nemo debet immiscere se rei alienæ ad se nihil pertinenti. Nobody should interfere in another's business, in what does not relate to himself. The confidence induced by undertaking any service for another, is a sufficient legal consideration to create a duty in the performance of it. This extends even to where the service is rendered gratuitously, for then the party, if he has once entered upon it, is liable for negligence in performing it (*Coggs v. Bernard*, 1 Sm. L. C., 8th Edn., 199).

Nemo debet locupletari alienâ jacturâ. No one ought to be enriched by another's disaster.

Nemo debet locupletari ex alterius incommodo. No one ought to be enriched from the misfortune of another.

Nemo debet rem suam sine facto aut defectu suo amittere. No one should lose his property without his own act or negligence. See *Quod meum est...*

Nemo de domo suâ extrahi potest. No one could be dragged or turned out of his own dwelling-house. In other words, every man's house is his castle. See *Domus sua...*

Nemo duobus utatur officiis. No one should fill two offices.

Nemo ejusdem tenementi simul potest esse hæres et dominus. No one can at the same time be the heir and owner of the same tenement.

Nemo est hæres viventis. No one is the heir of a living person. No one can be heir during the life of his ancestor. The heir is called into existence by the death of his ancestor, for no man in his lifetime can have an heir. By law no inheritance can vest, nor can any person be the actual complete heir of another, till the ancestor is dead; before the happening of this event he is called heir-apparent or heir-presumptive, and his claim, which can only be to an estate remaining in the ancestor at the time of his death, and of which he has made no testamentary disposition, may be defeated by the superior title of an alienee in the ancestor's lifetime, or of a devisee under his will. Therefore, if an estate be made to A for life, remainder to the heirs of B; now, if A dies before B, the remainder is at an end; for, during B's life, he has no heir; but if B dies first, the remainder then immediately vests in his heir, who will be entitled to the land on the death of A (*Per Patteson, J., Doe v. Perratt*, 7 Scott, N. R. 25; 9 Cl. & Fin. 606). But if there be sufficient on the will to show that by the word "heir" the testator meant heir-apparent, it shall be so construed; and in such a case the popular sense shall prevail against the technical (*Doe v. Perratt*, 10 Bing. 207; 7 Scott, N. R. 45; *Egerton v. Earl Brownlow*, 4 H. L. Cas. 103). Hence, if a devise be made to A for life, remainder to the heirs of the body of B, so long as B shall live, an estate *pur autre vie* being given, and the ancestor being *cestui que vie*, the rule of law would plainly be excluded.

But the maxim will not apply to Hindu sons who acquire a vested right in their father's ancestral property by their very birth; so that a son during the lifetime of his father has a present proprietary interest in the ancestral property as a coparcener to the extent of his proper share.

Nemo ex alterius detrimento fieri debet locupletari. No man ought to be made rich out of another's injury.

Nemo ex alterius facto prægravari debet. No one ought to be burdened by the act of another.

Nemo ex dolo suo proprio relevetur, aut auxilium capiat. Let no one be relieved or gain an advantage by his own fraud.

Nemo ex proprio dolo consequitur actionem. No one can found any claim or action upon his own wrong. See *Nullus commodum...*

Nemo ex suo delicto meliorem suam conditionem facere potest. No one can make his condition better by his own wrong or misdeed. See *Nullus commodum...*

Nemo inausitus nec summonitus condemnari debet, si non sit contumax. No man should be condemned unheard and unsummoned, unless for contumacy. See *Audi alteram partem.*

Nemo in communione potest invitus detineri. No one can be kept in coproprietorship against his will.

Nemo in propria causa testis esse debet. No man should be a witness in his own cause. But under s. 120 of the Ind. Evi. Act, in all civil proceedings, the parties to the suit, and the husband or wife of any party to the suit, are competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, is a competent witness. See *Vir et uxor...*

Nemo invitus compellitur ad communionem. No person is forced against his will into a partnership.

Nemo militans Deo impletur secularibus negotiis. No man warring for God should be troubled by secular business.

Nemo moriturus præsumitur mentire. Nobody about to die is presumed to lie. See the Ind. Evi. Act I of 1872, s. 32 (1).

Nemo nascitur artifex. No one is born an artificer.

Nemo patriam in qua natus est exuere nec ligeantiæ debitum ejurare possit. No man can disclaim the country in which he was born, nor abjure the bond of allegiance. See *Nemo potest exuere...*

A man cannot abjure his native country, nor the allegiance which he owes to his sovereign. Allegiance is of four kinds:—(1) Natural allegiance—that which arises by nature and birth; (2) Acquired allegiance—that acquired through some circumstance or act other than birth, *i. e.*, by denization or naturalization; (3) Local allegiance—that arising from residence simply within the country, for however short a time; and (4) Legal allegiance—that arising from oath taken usually at the tourn or leet; for by Common Law the oath of allegiance might be tendered to every one upon attaining the age of twelve years.

Allegiance is the tie which binds the subject to the Crown in return for that protection which the Crown affords to the

subject and is distinguished into two species, the one natural, the other local. Natural allegiance is such as is due from all men born within the dominions of the Crown, immediately upon their birth, and to this species of allegiance it is that the above maxim is applicable. It cannot be forfeited, cancelled or altered by any change of time, place or circumstance, nor by anything but the united concurrence of the legislature. The natural-born subject of one prince cannot, by any act of his own, not even by swearing allegiance to another, put off or discharge his natural allegiance to the former (*Per Jervis, C. J., Barrick v. Buba*, 16 C. B. 493). See *Origine propria...* It cannot be divested without the concurrent act of that prince to whom it was first due (*Wilson v. Marryat*, 8 T. R. 45; 1 B. & P. 430). Hence, though a British subject may, in certain cases, forfeit his right as such by adhering to a foreign power, he yet remains at common law always liable to his former duties.

Local allegiance is such as is due from an alien, or stranger-born, whilst he continues within the king's domain and protection; but it is merely of a temporary nature, and ceases the instant such alien departs from the kingdom into another. Such allegiance is confined, in point of time, to the duration of such his residence, and in point of locality, to the dominions of the kingdom, the rule being that *protectio trahit subjectionem, et subjectio protectionem*.

Until 1870 it was a rule of English law that no one could lay aside an allegiance which he had once acquired. But the Naturalization Act, 1870 (33 Vic. c. 14) provides means whereby persons who were born British subjects may declare themselves aliens, and cease to be British subjects. See on this subject the Ind. Suc. Act X of 1865, ss. 5 to 19, and the Naturalization Act XXX of 1852.

Nemo plus juris in alium transferre potest, quam ipse habet. No man can transfer to another a right or title greater than he himself possesses. See *Assignatus utitur...*

Nemo potest contra recordum verificare per patriam. No one can verify by jury against a record.

Nemo potest esse simul actor et iudex. No man can be at once suitor and judge. See *Nemo debet esse iudex...*

Nemo potest esse tenens et dominus. No man can be at once tenant and landlord.

Nemo potest exuere patriam suam. No one can abjure his native country. No one can lay aside an allegiance which he has acquired. See *Nemo patriam...*

Nemo potest facere per alium, quod per se non potest. No one can do through another what he cannot do through himself. This applies to delegated authorities.

Nemo potest mutare causam possessionis suæ. No one can change the motive or cause of

his possession. The possession of a tenant for life under a settlement is consistent with the right of the remainderman; and such tenant may not alter the quality of his possession so as to make the same adverse to the remainderman. In the same manner, a copy-holder cannot acquire adversely against his lord, or a lessee against his lessor.

Nemo potest mutare consilium suum in alterius injuriam. No one can change his mind to the injury of another or to the prejudice of another's right. See *Nova constitutio... Allegans contraria...* See also the Ind. Con. Act IX of 1872, s. 200.

Nemo potest plus juris ad alium transferre quam ipse habet. No one can transfer a greater right to another than he himself has.

Nemo præsimitur alienam posteritatem suæ prævisisse. No one is presumed to prefer the posterity of another to his own.

Nemo præsimitur donare. No one is presumed to give. See *Donatio non... Debitor non...*

Nemo præsimitur esse immemor suæ æternæ salutis, et maxime in articulo mortis. No one is presumed to be forgetful of his own eternal welfare; and more particularly at the point of death.

Nemo præsimitur ludere in extremis. No one is presumed to trifle at the point of death, i. e., an expression in a will is not to be taken as meaningless or absurd, if this can be avoided.

Nemo præsimitur malus. No one is presumed to be bad.

Nemo prohibetur plures negotiationes sive artes exercere. No one is restrained from exercising several businesses or arts.

Nemo pro parte testatus pro parte intestatus decedere potest. No person could die partly testate and partly intestate. See *Neque enim...*

Nemo punitur pro alieno delicto. No one is punished for the wrong or crime of another.

Nemo punitur sine injuriâ, facto, seu defaulto. No one is punished unless for some injury, deed, or default.

Nemo sibi esse judex vel suis jus decere debet. No one ought to be his own judge or the tribunal in his own affairs. See *Nemo debet esse judex...*

Nemo tenetur ad impossibile. (Rom. L.) No one is bound to an impossibility. No one is compelled to do things that are of an impossible nature. See *Lex non cogit...*

Nemo tenetur armare adversarium contra se. No one is bound to arm his adversary against himself.

Nemo tenetur divinare. No one is bound to foretell. No one is obliged to conjecture. Wherefore, conjectural explanations (as contradistinguished from inference from the facts proved) are not admissible in law. The maxim has its principal application in connection with circumstantial evidence.

Nemo tenetur jurare in suam turpitudinem. No one is bound to testify to his own baseness.

Nemo tenetur prodere seipsum. No one is bound to betray himself. No one can be compelled to criminate himself. In criminal trials for abortion, infanticide, unnatural offence, rape, &c., when an examination of the body of the accused is deemed necessary, it is to be observed that such examination should be with the consent of the accused, and not made against his will, since no one is bound to furnish evidence against himself. An innocent person is just as likely to refuse permission as one who is guilty; but if circumstances point to the accused out of several persons, the refusal to permit an examination would of course be interpreted against him or her.

Nemo tenetur seipsum accusare. No one is bound to accuse or criminate himself.

Hence, although an accused person may, of his own accord, make a voluntary statement as to the charge against him, a justice, before receiving his statement, is required to satisfy himself that such confession was free and voluntary (*Crim. Pro. Code V of 1893, s. 164; Ind. Evi. Act I of 1872, ss. 24 to 30*). See *Confessio, facta in judicio...*

But a witness shall not be excused from answering any question on any relevant matter, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness. But no such answer shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer (*Ind. Evi. Act I of 1872, ss. 132, 146 to 148*).

No oath or affirmation shall be administered to the accused in a criminal proceeding (*Code of Crim. Pro. V of 1893, s. 342; Ind. Oaths Act LX of 1875, s. 5*).

The discretionary power given by law to examine a prisoner should be used to ascertain from him how he may explain facts in evidence appearing against him, not to drive him to make self-criminating statements (*Ex parte Virabudra Gaud, 1 Mad. H. C. R. 99*).

See *Vir et uxor...*

Nemo testis esse debet in propria causa. No one should be a witness in his own cause. See *Nemo in propria...*

Nemo unquam judicet in se. Let no one ever be a judge in his own cause. See *Nemo debet esse judex...*

Nepos. A grandson.

Neptis. A granddaughter.

Neque enim idem ex parte testatus et ex parte intestatus decedere potest. (Rom. L.) No one could die partly testate and partly intestate. This was the rule of the Roman Law; but nothing is more common in English Law

than that the same man should die testate as to part and intestate as to the rest of his property.

Neque leges neque senatus-consulta ita scribi possunt ut omnes casus qui quandoque inciderint comprehendantur, sed sufficit ea quae plerumque accidunt contineri. Laws cannot be so worded as to include every case which may arise, but it is sufficient if they apply to those things which most frequently happen. See *Ad ea quae...*

Ne recipiatur. That it be not received. A caveat entered by a defendant in an action, against receiving and setting down the cause to be tried, that is, where the cause is not entered in due time.

Ne releassa pias. He has not released.

Ne unques accouple. Never married. A plea whereby the tenant in an action of dower, *unde nihil habet*, controverts the validity of the demandant's marriage with the person out of whose land's she claims dower. A defence by a tenant (or defendant) in an action of dower to the effect that the demandant and her alleged husband were never joined in lawful matrimony, and that therefore she could not claim dower as his widow. A plea by the alleged husband when sued for the debts of his wife.

Ne unques accouple in loyal matrimonie. Never joined in lawful wedlock.

Ne unques executor. He is not an executor. A phrase indicating the defence by which a person sued as executor denies that he ever was executor.

Ne unques seisie. He was never seised. A defence to an action of dower, whereby it was alleged that the deceased husband of the demandant had never been seised of such an estate as would give the demandant and legal claim to dower.

Ne unques seisie que dower. Nothing as to what dower.

Necum. (*Rom. L.*) The transfer of ownership of a thing absolutely or by way of mortgage.

Nient comprise. Not contained. An exception formerly sometimes taken to a petition as unjust, because the thing desired was not contained in the act or deed whereon the petition was granted.

Nient culpable. Not guilty. A plea in criminal prosecutions. Abbrev. *Nient cul.*

Nient dedire. To dissent from or to disown nothing. To suffer judgment to be had against one by not denying or opposing it, *i. e.*, by default.

Nient le fait. Not his deed. See *Non est factum.*

Nihil, Nihilis, Nichils. Nothing. Words formerly used of debts due to the Exchequer which could not be realized owing to the insufficiency of the debtors; also of there being no assets available for the creditors of a bankrupt.

Nihil ad rem. Nothing to the purpose.

Nihil aliud potest Rex quam quod de jure potest. The king can do nothing but what he is empowered by law to do.

Nihil capiat per breve, or per billam. That he take nothing by his writ or by his bill. A judgment given against the plaintiff in an action, either in bar of his action, or in abatement of his writ or bill, &c.

Nihil capiat per breve suum de errore. That he take nothing by his writ on account of error.

Nihil dat qui non habet. He gives nothing who has nothing. See *Assignatus ulitur...*

Nihil debet. He owes nothing. A plea of the general issue in an action of debt.

Nihil de re accersit ei, qui nihil in re quando jus accresceret habet. No property accrues to him who has no property in the survivorship.

Nihil dicit. He says nothing. Used when the defendant puts in no plea at all to the plaintiff's declaration by the day assigned; on which plaintiff recovers judgment by default, called judgment by *nihil dicit*.

Nihil facit error nominis cum de corpore constat. An error as to a name is nothing when there is certainty as to the person. See *Falsa demonstratio...*

Nihil facit error nominis cum de corpore vel personâ constat. A mistake in the name does not matter when the body or person is manifest. See *Falsa demonstratio...*

Nihil habet forum ex scenâ. The Court has nothing to do with what is not before it.

Nihil in lege intolerabilius est, eandem rem diverso jure censeri. Nothing in law is more intolerable than to rule a similar case by a diverse law.

Nihil majis justum est quam quod necessarium est. Nothing is more just than what is necessary.

Nihil operantur quæ tacite insunt. Those contracts which are tacitly agreed to do not operate.

Nihil perfectum est dum aliquid restat agendum. Nothing is perfect whilst anything remains to be done.

Nihil possumus contra veritatem. We can prevail nought against truth.

Nihil præscribitur nisi quod possidetur. Nothing is prescribed except what is possessed.

Nihil quod est contra rationem est licitum. Nothing is permitted which is contrary to reason.

Nihil quod est inconveniens est licitum. Nothing that is inconvenient is allowed. Nothing is permitted to be done that may be productive of inconvenience. The law will sooner suffer a private mischief than a public inconvenience. See *Argumentum ab inconvenienti...* *Lex citius tolerare...*

Nihil simul inventum est et perfectum. Nothing is invented and perfected at the same moment.

Nihil tam conveniens est naturali æquitati quam unumquodque dissolvi eo ligamine quo ligatum est. Nothing is so agreeable to natural equity as that everything should be dissolved by the same means by which it was bound.

It is an old rule of the common law that every contract ought to be dissolved by matter of as high a nature as that which first made it obligatory; and it was therefore laid down that an obligation is not made void but by release; a record by a record; a deed by a deed; and a parol promise or agreement is dissolved by parol, and an Act of Parliament by Act of Parliament.

But the Indian law does not distinguish between agreements under seal and by parol (*Krishna v. Rayappa*, 4 Mad. H. C. R. 98), and the existence of any distinct subsequent oral agreement to rescind or modify a previous contract grant or disposition of property may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents (*Ind. Ev. Act I of 1872, s. 92, prov. 4*). Oral evidence of the discharge of an obligation executed by writing is admissible (*Ramanadamisairaiyar v. Ramabhatiar*, 2 Mad. H. C. R. 412).

Nihil tam naturali est, quam eo genere quidque dissolvere, quo colligatum est; ideo verborum obligatio verbis tollitur, nudi consensus obligatio, contrario consensu dissolvitur. Nothing is so natural as to dissolve anything in the way in which it was bound together; therefore an obligation made by words is put an end to by words; obligation of mere consent is dissolved by a contrary consent.

Nihil tam proprium est imperii quam legibus vivere. Nothing is so much the property of sovereignty as to live according to the laws.

Nihil temere novandum est. Innovations should not be rashly made. Nothing should be rashly changed.

Nil capiat per breve. See *Nihil capiat*...

Nil consensui tam contrarium est quam vis atque metus. There is nothing so opposed to consent as force and fear (coercion and threat). See the *Ind. Con. Act IX of 1872, ss. 14, 15 and 19*, and the *Ind. P. C. XLV of 1860, s. 90*.

Nil debet. See *Nihil debet*.

Nil dicit. See *Nihil dicit*.

Nil habuit in tenementis. He (*i. e.*, the landlord) had no interest in the tenements demised. A plea by a lessee to an action of debt for rent by the lessor, without

deed or occupation by the lessee; for if the lessee had become tenant, he would have been estopped from denying his landlord's title.

Nil tam conveniens est naturali æquitati quam voluntatem domini voluntis rem suam in alium transferre ratam habere. Nothing can be more in accordance with natural equity than to give effect to the will of a proprietor, who desires to transfer his property to another. Nothing is so agreeable to natural equity as to regard the intention of the owner in transferring his own property to another. See *Cujus est dare*...

Nimia subtilitas in jure reprobat, et talis certitudo certitudinem confundit. Too much subtlety is blamed in law, for such nice pretence of certainty confounds legal certainty. The maxim applies to legal argumentation as well as to the practical administration of properties.

Nimum altercando veritas amittitur. By too much altercation truth is lost.

Nisi. Unless; but. A decree, rule, or order of a Court is said to be made *nisi* when it is not to be of force unless the party against whom it is made fails within a certain time to show cause against it, *i. e.*, a good reason why it should not be made. If the party fails to show cause, the decree, rule or order is made absolute.

Nisi causa. Unless cause.

Nisi convenissent in manum viri. Unless they agreed to marry.

Nisi per legale judicium parium suorum vel per legem terre. Unless by the lawful judgment of his equals, or by the law of the land.

Nisi prius. Unless before or previously. An action was formerly triable only in the Court where it was brought. But it was provided by Magna Charta that assizes of novel disseisin and mort-ancestor (which were the most common remedies of that day) should thenceforward, instead of being tried at Westminster, in the superior Court, be taken in their proper counties; and for this purpose justices were to be sent into every county once a year to take these assizes there. Thus the trial was to be at Westminster, only in the event of its not previously taking place in the county before the justices appointed to take the assizes. *Nisi prius* was a judicial writ, whereby the sheriff of a county was commanded to bring the men impanelled as jurors in any civil action to the Court at Westminster on a certain day, unless before that day the justices of assize came into the county, in which case it became his duty to return the jury, not to the Court of Westminster but before the justices of assize. A *nisi prius* trial now means a trial before a single judge and jury, of a civil action, either at the sittings held in London and Middlesex, or at the assizes, Abbrev. N. P.

Nobiles magis plectuntur pecuniā; plebes vero in corpore. The higher classes are more punished in money; but the lower in person.

Nobiliores et benigniores præsumptiones in dubiis sunt præferendæ. In cases of doubt, the more generous and benign presumptions are to be preferred.

Noctanter. By night; in the night time. An old writ which lay for one who had made a ditch or hedge on waste ground, and it had been thrown down in the night time and the offenders could not be found. The sheriff was directed to make inquiry and to distrain, if necessary, the neighbouring towns for the repair thereof.

Nocumentum. A nuisance; annoyance.

Nolens volens. Whether willing or unwilling. Whether he will or not. Plur. *Nolentes volentes*, whether they will or not.

Nolle prosequi. That he will not prosecute. A formal averment by the plaintiff in an action, that he will not further prosecute his suit as to one or more of the defendants or as to part of the claim or cause of action. It is in the nature of a *retraxit* operating to withdraw the cause of action in respect of which it is entered, from the record.

Nomen collectivum. A collective name or term.

Nomen ductis mergitur nomine regis. The name of the duke is merged in the name of king.

Nomen generalissimum. The most universal or general name or term.

Nomen hæredis, in primâ investiturâ expressum, tantum ad descendentes ex corpore primî vasalli extenditur, et non ad collaterales nisi ex corpore primî vasalli sive stipitis descendant. The name of heir, expressed in the first investiture, is extended only to the descendants from the body of the first vassal, and does not descend to collateral kindred, unless they be lineal from the body of the first vassal or stock.

Nomen non sufficit si res non sit de jure aut de facto. The name is not sufficient if the thing be not by law or by fact.

Nomina sunt mutabilia, res autem immobiles. Names are mutable but things immutable.

Nomina sunt notæ rerum. Names are the notes of things.

Nomina sunt symbola rerum. Names are the symbols of things.

The intent of s. 26 of the Code of Civil Procedure (s. 50 of the present Code XIV of 1882) is to secure the definite statement of the subject and object-matters of the litigation, and the words "so far as they can be ascertained" were not intended to compel a plaintiff to insert every name and title to which the defendant may conceive himself entitled. The omission of the titles "Honourable," "Maharaja," and "Sultan" does not constitute such an un-naming of the plaintiff as to justify the dismissal of the plaint (*Zamindar of Bobbili v. Zamindar of Vizianagram*, 8 Mad. H. C. R. 81).

Nominatim. By name; expressed one by one.

Nomine dotis. In the name of dower.

Nomine penæ. In the name of a penalty. A penalty incurred for not paying rent, &c., at the day appointed by the lease or agreement for payment thereof.

Non acceptavit. He did not accept, e. g., a bill of exchange.

Non accipi debent verba in demonstrationem falsam quæ competent in limitationem veram. Words which agree in a true meaning ought not to be received in a false sense. If it is doubtful upon the words, whether they import a false reference or demonstration, or whether they be words of restraint that limit the generality of the former words, the law will never intend error or falsehood. If, therefore, there is some land wherein all the demonstrations are true, and some wherein part are true and part false, they shall be intended words of true limitation, to pass only those lands wherein all those circumstances are true. See *Falsa demonstratio*...

Non accrevit infra sex annos. Has not accrued within six years. A plea of limitation to a cause of action.

Nonæ et decimæ. Rents and tithes. Payments made to church by those who were tenants of church farms.

Non alio modo puniatur aliquis quam secundum quod se habet condemnatio. A person may not be punished differently than according to what the sentence enjoins.

Non aliter à significatione verborum recedi oportet quam cum manifestum est aliud sensisse testatorem. A departure from the literal meaning of the words used is not justifiable, unless it be clear that the testator himself intended something different therefrom. See *Benigna facienæ*...

Non allegatum. Not pleaded.

Non assumpsit. He did not promise. The plea of the general issue in an action of assumpsit, to the effect that the defendant did not promise as alleged in the plaintiff's declaration.

Non assumpsit infra sex annos. He did not promise within six years. A plea to an action of assumpsit denying that any such promise as mentioned in the declaration was made within six years, and claiming the benefit of the statute of Limitation.

Non bis in idem. Not twice tried for the same offence.

Non capitur qui jus publicum sequitur. To insist on a rule of public law is not to over-reach.

Non cepit. He has not taken. A plea of general issue in an action of *replevin*, that the defendant did not take the goods as alleged by the plaintiff.

Non cepit modo et forma. He had not taken in manner and form.

Non compos. Insane; incompetent.

Non compos mentis. Of unsound mind, so as to be incapable of managing one's affairs. A drunken person.

Non concedantur citationes priusquam exprimat super quâ re fieri debet citatio. Summons should not be granted before it is expressed on what matter the summons ought to be made.

Non concessit. He did not grant. A plea resorted to by a stranger to a deed, because estoppels do not hold with respect to strangers. This plea brought into issue the title of the grantor as well as the operation of the deed.

Non constat. It does not appear. It is not evident. A phrase often used to show, that an alleged inference is not deducible from given premises. See *Non sequitur*.

Non constituit. It has not appeared.

Non culpabilis. Not guilty. Abbrev. *Non. cul.*

Non culpa nisi mens sit rea. There is no guilt unless there be a guilty intention. See *Actus non facit...*

Non culpavit. He has not offended or is not guilty.

Non damnificatus. Not damnified. Not injured. A plea by a defendant when sued on an indemnity-bond with condition to save the plaintiff harmless.

Non dat qui non habet. He gives not who hath not. See *Assignatus utitur...*

Non deo melioris conditionis esse, quam auctor mens à quo jus in me transit. I ought not to be in a better condition than my author from whom the right passes to me. See *Assignatus utitur...*

Non debet. He owes not; he ought not.

Non debet adduci exceptio ejus rei cujus petitur dissolutio. An exception of the thing whose abolition is sought ought not to be adduced. A matter, the validity of which is at issue in legal proceedings, cannot be set up as a bar thereto. See *Non potest adduci...*

Non debet alteri per alterum iniqua conditio inferri. The condition on one man ought not to be made worse by the act of another. An unjust condition ought not to be imposed upon one by another. See *Res inter alios...*

Non debet cui plus licet, quod minus est non licere. A man having a power may do less than such power enables him to do. He who can do the greater can do the less. See *Omne majus...*

Non decimando. A custom or prescription to be discharged of all tithes, &c.

Non decipitur qui scit se decipi. He is not deceived who knows himself to be deceived.

The essence of the offence of cheating is deceit. Thus, where a workman stated that he had done more work than he really had, and requested payment for the work he stated he had done, and his master, know-

ing that it was a false overcharge, and wishing to entrap him, paid him the amount demanded, it was held that the workman could not be indicted for obtaining money under false pretences, as it was not the falsehood which induced his master to part with the money (*R. v. Mills, Dears. & B.* 205; 20 L. J. M. C. 79).

But a man may be guilty of an attempt to cheat, although the person he attempts to cheat is forewarned, and is therefore not cheated (*Govt. of Bengal v. Umesh Chunder Mitter*, 16 Cal. 310, referring to *R. v. Hensler*, 11 Cox. C. C. 570). See *Qui scit se...*

Non definitur in jure quid sit "conatus." What an "attempt" is, is not defined in law.

Non demisit. He has not demised. In an action of debt for rent, the defendant may plead *non demisit*, nothing in arrear, or that the plaintiff never demised.

Non detinet. He doth not detain. The general issue in an action of detinue.

Non distringendo. A writ not to distrain, used in divers cases.

Non effecit affectus, nisi sequatur effectus. Sed in atrocioribus delictis puniuntur affectus, licet non sequatur effectus. The intention fulfils nothing unless an effect follow. But in deeper delinquencies, the intention is punished, although an effect does not follow. See *Voluntas reputatur...*

Non est arctius vinulum inter homines quam jusjurandum. There is no tighter link than an oath among mankind.

Non est disputandum contra principia negantem. We cannot dispute against a man who denies first principles.

Non est factum. It is not his deed. The general issue in an action on a bond or other deed, whereby the defendant denies that to be his deed whereon he is impleaded, or that he has executed it. In every case where a bond is void, the defendant may plead *non est factum*; but when a bond is voidable only, he must show the special matter, and conclude judgment. A man may plead *non est factum* to a deed read false, as where he is illiterate.

Non est inventus. He is not found; he cannot be found. A return by the sheriff to a writ of *capias*, when he cannot find the defendant within his bailiwick.

Non est novum ut priores leges ad posteriores trahantur. It is no new thing that the statutes of a prior date should give place to those of a later period. See *Leges posteriores...*

Non est novum ut quæ semel utiliter constituta sunt durent, licet ille casus extiterit a quo initium capere non potuerunt. It is no new thing, that what is once beneficially established should continue in spite of an event which would have made the original existence of such a state of things illegal.

Non est prosecutus. Non-suit. A renunciation of a suit by the plaintiff, most commonly upon discovering some error or defect.

Non est recedendum à communi observantia. There is no departing from common observance.

Non est regula quin fallat. There is no rule which may not fail. There is no rule without an exception.

Non ex opinionibus singulorum sed ex communi usu nomina exaudiri debent. Names ought to be regarded not by the opinions of individuals, but by the common use.

Non facias malum, ut inde veniat bonum. You are not to do evil that thence good may arise.

Nonfeasance. Not having done his duty; non-performance; a neglect in duty; an omission of duty.

Non fecit vastum contra prohibitionem. He has not committed waste against the prohibition. A plea by the tenant in an action after a writ of *estripamentum* has been delivered to him prohibiting him from committing waste.

Non fungibiles. Any moveable goods which cannot be estimated by weight, number or measure; hence jewels, paintings, statutes, and works of art in general are not considered as fungibles, because their value cannot be measured by any common standard; whereas *res fungibiles* are money, barley, oil and such like, which can be repaid in kind. See *Fungibiles res*.

Non hæc in fœdera veni. I did not agree to these terms.

Non impedit clausula derogatoria quo minus ab eadem potestate res dissolvantur a quâ constituntur. A derogatory clause does not impede things from being dissolved by the same power by which they are created. See *Leges posteriores...*

Non implacitando aliquem de libero tenemento sene breve. An old writ to prohibit bailiffs, &c., from distraining any man touching his freehold without the king's writ.

Non infregit conventionem. He has not broken his covenant or agreement. A plea in an action for non-repair according to covenant.

Non in legendo sed in intelligendo leges consistunt. The laws consist not in being read but in being understood.

Non jus sed seisinam facit stipitem. It is not right, but seisin, that makes a stock. See *Seisinam facit...*

Non licet quod dispendio licet. That which is permitted at a loss is not permitted.

Non liquet. It does not appear clear. A verdict given by a jury when a matter was to be deferred to another day of trial. The same phrase was used under the Roman Law, when after hearing a cause it was not thought sufficiently clear to pronounce upon. Abbrev. *N. L.*

Non merchandizando victualia. An ancient writ to justices of assize to enquire whether the magistrates or officers of such a town sold victuals in gross, or by retail, during their office contrary to the statute, and to punish them if they found it true.

Non misit breve. He has not returned the writ.

Non molestando. A writ that lay for him that was molested contrary to the king's protection granted to him.

Non multum distant a brutis qui ratione carent. Those who want reason are not far removed from brute animals.

Non numeratæ pecuniæ. Money not paid; no consideration.

Non observata formâ infertur annullatio actûs. When form is not observed a failure of the action ensues.

Non obstante. Notwithstanding. A clause by which the Crown occasionally attempted to give effect to grants and letters patent notwithstanding any statute to the contrary. Such a clause was in effect a license from the king to do a thing which at common law might be lawfully done; but which, being restrained by Act of Parliament, could not be done without such license. But this doctrine of *non obstante* which set the prerogative above the laws, was effectually demolished by the Bill of Rights at the Revolution.

Non obstante aliquo statuto in contrarium. Any other statute to the contrary notwithstanding.

Non obstante veredicto. Notwithstanding the verdict. A judgment *non obstante veredicto* is a judgment in plaintiff's favour after verdict found for the defendant, when it appears to the Court that the defendant has, by his pleading, admitted himself to be in the wrong, and has taken issue on some point which though decided in his favour by the jury, still does not better his case.

Non officit conatus nisi sequantur effectus. An attempt does not hinder unless the consequence follow.

Non omittas. That you omit not. The clause *non omittas propter aliquam libertatem* (that you omit not by reason of any liberty in your bailiwick) is usually inserted in all processes addressed to the sheriff, which makes the liberty *pro hac vice*, parcel of the sheriff's bailiwick, and the sheriff must enter and execute the writ within the liberty. If the writ does not contain this *non omittas* clause, the sheriff directs the mandate either to the lord or the bailiff of the liberty, by whom the writ is executed and returned. Formerly this clause was inserted only after a return by the sheriff that the bailiff of the liberty or franchise within the county had neglected or refused to execute the writ.

Non omne quod licet honestum est. Not everything which the law allows is honourable,

e. g., the silent acquiescence of a vendor in the self-deception of a purchaser, which is not ground for an action for deceit or misrepresentation. A person may keep within the strict letter of the law and even within the strict rules of equity, so as not to be liable either at law or in equity, and yet his conduct under the circumstances may not be honourable, but morally detestable.

Non omnium, quæ a majoribus nostris constituta sunt ratio reddi potest; et ideo rationes eorum, quæ constituuntur, inquiri non oportet; aliquam multa ex his, quæ certa sunt, subvertuntur. A reason cannot be given for all those laws which have been established by our ancestors; and therefore, the reasons of those laws which remain established ought not to be demanded; otherwise many of them, which are determined, would be overthrown. See *Ubi eadem ratio...*

Non pertinent ad judicem secularem cognoscere de iis quæ sunt merè spiritualia annexa. It belongs not to the secular judge to take cognizance of things which are merely spiritual. Our Courts are temporal Courts and not spiritual; consequently, any acts which are purely religious cannot be taken cognizance of by the Courts here, unless they affect civil rights also in some way. A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies (*Civ. Pro. Code XIV of 1882, s. 11*).

Non plevin. A default in not replevying land in due time.

Non ponendis in assisis et juratis. An old writ for freeing and discharging persons from attending upon assizes and juries.

Non possessori incumbit necessitas probandi possessiones ad se pertinere. A person in possession is not bound to prove that the possession belongs to him. The burden of proving that possession belongs to him does not fall upon the party in actual possession. Compare *Melior est conditio... In equali jure...*

Non potest adduci exceptio ejus rei cujus petitur dissolutio. A plea or exception of the same thing whose avoidance is sought, cannot be made. Where the legality of some proceeding is the matter in issue between two parties, none of them can rely upon the proceeding itself as a bar to the adverse party. An objection cannot be founded on the same thing the avoidance of which is sought, *i. e.*, one cannot impugn the legality of an instrument or proceeding, and at the same time assert that it is binding on the other party. Where the legality of some proceeding is the matter in dispute between two parties, he who maintains its legality, and seeks to take advantage of it, cannot rely upon the proceeding itself, as a bar to the adverse party. See *Non debet adduci...*

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If a man be attainted and executed, and the heir bring error upon the attainder, it would be bad to plead corruption of blood by the same attainder; otherwise the heir would be without remedy ever to reverse the attainder (*Loukes v. Holbeach*, 4 Bing. 420; commented on, *Byrne v. Manning*, 2 Dowl. N. S. 403). So, although a person attainted cannot be permitted to sue for any civil right in a court of law, yet he may take proceedings, and will be heard, for the purpose of reversing his attainder. The same principle applies in the case of proceeding to reverse outlawry (*Matthews v. Gibson*, 8 East, 527; *Craig v. Levy*, 1 Exch. 570.)

Non potest probari quod probatum non relevat. That cannot be proved which, if proved, is irrelevant or immaterial. As to the relevancy of facts, see Chapter II (ss. 5 to 55) of the Ind. Evi. Act I of 1872.

Non potest rex gratiam facere cum injuria et damno aliorum. The king cannot grant a favour on one subject to the injury and damage of others.

The king's grants are invalid when they destroy or derogate from rights, privileges or immunities previously vested in another subject. The crown, for example, cannot enable a subject to erect a market or fair so near that of another person so as to affect his interests therein. Nor can the king grant the same thing in possession to one, which he or his progenitors have granted to another. Nor can he pardon where private justice is principally concerned in the prosecution of offenders. Therefore, he cannot pardon a common nuisance while it remains unredressed, or so as to prevent an abatement of it; though afterwards he may remit the fine.

See *Donatio principis...*

Non potest videri desisse habere qui nunquam habuit. On who never did possess cannot be considered to have ceased to possess.

Non præsuntur donatio. A donation is not to be presumed. See *Donatio non...*

Non procedendo ad assisam regē inconsulto. An old writ to stop the trial of a cause appertaining to one that was in the king's service until the king's pleasure be further known.

Non pros. Non prosequitur. He does not prosecute. The delay or neglect by a plaintiff in proceeding with his action. So a judgment for the defendant by reason of such neglect in the plaintiff is called judgment of *non pros.*

Non prosequitur brevis vel sectam. He does not prosecute his writ or suit.

Non quod dictum est, sed quod factum est, in jure inspicitur. In law regard is to be had not to what is spoken, but to what is done.

The words of the parties are not conclusive of their intention where these words are at variance with their actual conduct,

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It may be expressed that a specified sum is *liquidated damages* and yet the specified sum may be in fact only the outside limits of uncertain and unliquidated damages, when the nature of the contract or bond is regarded. See *Modus et conventio*...

Non quod dictum sed quod factum inspicendum est. Not what is said but what is done is to be looked to. Equity looks to the intent rather than to the form, for equity would in no case permit the veil of form to hide the true effect or intention of the transaction. Thus equity will in general relieve against a penalty or a forfeiture, and if, e. g., it is satisfied that the sum of money specified in a bond is penal, it will refuse to enforce payment thereof in full, even though the parties may expressly state in the bond that the specified sum is not by way of penalty, but is to be held as the ascertained or "liquidated damages" for breach of the condition of the bond (*Ind. Con. Act IX of 1872, s. 74*). To this maxim may also be referred the equitable doctrine that governs mortgages. Where an instrument of mortgage, though in terms it transfers an estate on failure to pay the mortgage-money on a fixed day, yet appears clearly to have been entered into by parties for securing the repayment of a loan, the mortgagor making the security subservient for the purposes for which it was created, may, in equity and good conscience, redeem the property by paying off the principal debt and the interest, though the stipulated time for payment has been allowed to pass by (*Ramji bin Tukaram v. Chinto Sakharani*, 1 Bom. H. C., A. C., 199); for a Court of equity thinks it to be against conscience and unreasonable, that the mortgagee should retain as owner for his own benefit what was intended as a mere security. Courts of equity have held that the legal maxim *modus et conventio vincunt legem* is inapplicable in the case of mortgages, that is to say, the debtor cannot, even by the most solemn engagements entered into at the time of the loan, preclude himself from his equitable right to redeem; and the mortgagee cannot by his unauthorized act interfere with the mortgagor's right to redeem (*Shaikh Mushur Hossein v. Hur Pershad Roy*, 15 W. R. 858).

See *Modus et conventio*...

Non quod voluit testator, sed quod dixit, in testamento inspicitur. In wills, not what the testator wished or intended, but what he has spoken (i. e., his words) is to be examined or looked to. The intention of the testator is to be distinguished from the meaning of his words (*Doe v. Garlick*, 14 M. & W. 701). We are to ascertain by construing the will, not *quod voluit*, but *quod dixit*, or rather we are to ascertain *quod voluit* by interpreting *quod dixit* (*Grover v. Birmingham*, 5 Exch. 194). See *Benignæ faciendæ*...

Non refert an quis assensum suum præfert verbis, aut rebus ipsis et factis. It matters

not whether a man gives his assent by his words, or by his acts and deeds.

Non refert quid ex æquipollentibus fiat. It matters not which of (two) equivalents happens.

Non refert quid notum sit iudici, si notum non sit in forma iudicii. It matters not what is known to the judge, if it be not known in a judicial form, i. e., if he have not judicial cognizance of it. The judge cannot import his private knowledge of the facts into a case. He must found his judgment upon what appears on the record. See *Judicis est judicare*...

It is extremely improper for a Magistrate, in disposing of a case to rely in any way on statements made to him out of Court (*Queen-Empress v. Sahadev*, 14 Bom. 572). Where a magistrate instead of proceeding upon evidence judicially taken before him, acted upon his extra-judicial knowledge, the High Court set aside his order (*Rajah Run Bahadur v. Rance Talassuree*, 22 W. R. Cr. 79). Where a Judge is the sole Judge of law and fact in a case tried before himself, he cannot give evidence before himself, or import matters into his judgment not stated on oath before the Court in the presence of the accused (*Queen-Empress v. Manikam*, 19 Mad. 263). In trying a question of fact no judge is justified in acting principally on his own knowledge or belief or public rumour (*Meethun Bibee v. Buksheer Khan*, 7 W. R. P. C. 27; 11 Moo. I. A. 213; 1 Suth. P. C. 683).

The Code of Crim. Pro. V of 1898, s. 294 provides that if a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined, and re-examined, in the same manner as any other witness.

A judge should not place too much reliance on his own powers of observation and make himself an expert witness on behalf of one of the parties without subjecting himself to cross-examination (*Mariand v. Balkrishna*, P. J., 1895, p. 272).

Although a Magistrate is not disqualified from dealing with a case judicially merely because in his character of Magistrate it may have been his duty to initiate the proceedings, yet a Magistrate ought not to act judicially in a case where there is no necessity for his doing so, and where he himself discovered the offence and initiated the prosecution, and where he is one of the principal witnesses for the prosecution (*Queen v. Bholanath Sen*, 2 Cal. 28).

Non refert verbis an factis fit revocatio. It matters not whether a revocation is made by words or deeds.

Non residentia pro clericis regis. An old writ directed to the ordinary, charging him not to molest a clerk employed in the king's service, by reason of his non-residence, or absence from his benefice.

Non respondebit minor, nisi in causâ dotis, et hoc pro facore doti. A minor shall not answer, unless in a case of dower, and this for favour of dower.

Non sanæ memoriæ. Unsound memory; non sane memory. See *Non compos...*

Non sequitur. It does not follow. An expression used in argument to indicate that the premises do not warrant the inference drawn from them. See *Non constat.*

Non sequitur clamorem suum. He does not pursue his claim.

Non sine magna jurisconsultorum perturbatione. Notwithstanding a great disturbance of the lawyers.

Non solent quæ abundart vitiare scripturas. Surplusage or irrelevant matter does not vitiate a written instrument. See *Utile per...*

Non solvendo pecuniam ad quam clericus mulctatur pro non residentiâ. An old writ prohibiting an ordinary from taking a pecuniary mulct imposed upon a clerk of the king for non-residence.

Non sum informatus. I am not informed: I have no instructions. A formal answer made by an attorney that is commanded by the Court to say what he thinketh good defence for his client, and being not instructed, says he is not informed, by which he is deemed to leave his client undefended, and so judgment passeth for the adverse party. It is commonly used in warrants of attorney given for the express purpose of confessing judgment.

Non suspicio ejus libet vani et ineticulosi hominis, sed talis qui possit cadere in virum constantem; talis enim debet esse metus, qui in se contineat vitæ periculum, aut corporis cruciatum. Not the suspicion of any weak and timorous person, but such as may attack a resolute man; for the fear must be such as a man feels in danger of life or maim of body. See the Ind. P. C. XLV of 1860, ss. 99, 100, 108 to 105.

The right of private defence of person and property was not allowed to be pleaded in a case where there was no fear of an assault such as is described in the clauses of s. 100 of the Penal Code, and where the prisoners used deadly weapons (spears) and killed two unarmed persons whom they found ploughing land which the prisoners believed to be theirs (*Queen v. Gourchand*, 18 W. R. Cr. 29).

Non temere credere est nervus sapientiæ. Not to believe rashly is the nerve of wisdom.

Non ullam habebant episcopi auctoritatem, præter eam quam a rege acceptam referebant. Jus testamenti probandi non habebant administrationis potestatem cuique delegare non poterant. The bishops had no authority except that which they derived from the king. They did not possess the right of proving a will; they could not delegate the power of administration to any one.

Non valet. Not valid; invalid; of no avail; null and void.

Non videntur qui errant consentire. They are not supposed to consent who commit a mistake. They are not considered to consent who act under a mistake. See *Ignorantia facti...*

Non videntur rem amittere quibus propria non fuit. They cannot be said to lose a thing who never had it as their own.

Non videtur consensum retinuisse si quis ex præscripto minantis aliquid immutavit. He does not appear to have retained consent, who has changed anything through menaces.

Non videtur quisquam id capere quod ei necesse est alii restituere. No one is considered entitled to recover that which he must give up to another.

Noscitur a sociis. The meaning of a doubtful word is to be known by reference to the meaning of other words associated with it.

It is a rule laid down by Lord Bacon that *copulatio verborum indicat acceptationem in eodem sensu*, the coupling of words show that they are to be understood in the same sense. And, where the meaning of a particular word is doubtful or obscure, or where a particular expression, when taken singly is inoperative, the intention of the party who used it may frequently be ascertained by looking at adjoining words, or at expressions occurring in other parts of the same instrument, for *quæ non valeant singula juncta juvant*, words which are ineffective when taken singly operate when taken conjointly; one provision of a deed or other instrument must be construed by the bearing it will have upon another. See *Ex antecedentibus...* *Nemo aliquam partem...*

The word "instrument" in s. 39 of the Guardians and Wards Act VIII of 1890, means instruments *ejusdem generis* with a will, and a decree of a Civil Court is not an instrument within the contemplation of the section (*Bai Harkor v. Bai Shangan*, 18 Bom. 375).

Noscitur ex socio, qui non cognoscitur ex se. He may be known from his associate who cannot be known from himself. A word or sentence that cannot be understood by itself may be understood by reference to words or sentences preceding and following it.

Nos, divini juris rigorem moderantes, &c. We, moderating the rigour of divine law, &c.

Nostro periculo. At our own risk.

Nota bene. Mark well; bear in mind.

Nova assignation. New assignment. Under the system of pleading before the Judicature Act, if, owing to the vagueness or generality of the plaintiff's declaration, the answer of the defendant did not sufficiently meet the point at issue, the plaintiff was obliged to 'new-assign' or re-state the cause of action, which was called a new

or novel assignment. This must now be done by amendment.

Nova constitutio, futuris formam imponere debet, non præteritis. A new law ought to impose form on what is to follow not on the past. A new legislative enactment ought to be prospective, not retrospective, in its operation.

It is a general principle of law that no statute shall be construed so as to have a retrospective operation, unless its language is such as plainly to require that construction; and this involves the subordinate rule that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary (*Lauri v. Renad*, 1892, 3 Ch. 421). Except in special cases a new Act ought to be so construed as to interfere as little as possible with vested rights (*Reid v. Reid*, 31 Ch. D. 409).

Retrospective laws are, as a rule, of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law (*Phillips v. Eyre*, L. R. 6 Q. B. 23).

Moon v. Durdan (2 Exch. 22) is a leading case on this subject. An action was brought upon a wager before the passing of the 8 & 9 Vic. c. 109. While it was pending, the statute was passed enacting that all contracts by way of wager shall be null and void and that no suit shall be brought or maintained for recovering money alleged to be won upon a wager. The question was whether it operated to defeat the plaintiff's claim. *Held*, that it did not. (Followed in *Doobhass Pettamberdass v. Thackoorseydass*, 5 Moo. I. A. 109; 7 Moo. P. C. 239).

Where a statute is passed while an action is pending, strong and distinct words are necessary to alter the vested rights of either litigant as they stood at the commencement of the action. In the absence of clear words to that effect, a statute will not be construed as taking away a vested right of action acquired before it was passed (*Knight v. Lee*, 1893, 1 Q. B. 41).

In a suit filed by a joint stock company, after registration, to recover damages for breach of a contract made with the defendants before registration, held, that the contract was illegal under s. 2 of Act XIX of 1857 and that the plaintiffs could not sue upon it. Where the law is altered while a suit is pending, the law, as it existed when the action was commenced, must decide the rights of the parties, unless the Legislature, by the language used, show a clear intention to vary the mutual relations of such parties (*Gujarat Trading Co. Ltd. v. Trikamji Velji & Co.*, 3 Bom. H. C., O. C., 45).

A Municipality instituted proceeding under the Bombay District Municipal Act (Bom. Act VI of 1873). During the pendency of the proceeding the Act was repealed and replaced by Bom. Act III of 1901. The Magistrate, therefore, acquitted the accused on the ground that under the new Act he had no jurisdiction to dispose of the complaint. *Held*, reversing the order, and ordering the Magistrate to rehear the complaint (1) that in the absence of an expression of any contrary intention in the new Act, the repeal of the old Act could not be deemed to affect any proceedings commenced before the new Act came into force. (2) That the Magistrate was bound to conclude the proceedings which had already been instituted before him under the old Act, and that he could not disclaim jurisdiction because the procedure laid down for proceedings instituted under the new Act was entirely different (*Mukund Ramchandra Karkun v. Ladu Govind Pendnekar*, 3 Bom. L. R. 584).

A mortgage of a minor's property made by his guardian holding a certificate under Act XL of 1858 without obtaining sanction of Court as required by s. 18 of the Act is absolutely null and void. S. 2 of the Guardians and Wards Act does not give retrospective effect to s. 30, which, therefore, does not apply to a mortgage executed before the Act came into operation, so as to destroy its void character, and render it merely voidable (*Lala Hurro Prosul v. Basaruth Ali*, 25 Cal. 909).

As to criminal acts, there is a great difference between making an unlawful act lawful, and making an innocent action criminal. Unless the intention of the legislature is clearly expressed to that effect, criminal offences are not to be created by giving a retrospective operation to statutes (*Reg. v. Griffiths*, 1891, 2 Q. B. 145). The injustice and impolicy of *ex post facto* or retrospective legislation is most apparent in the case of new criminal laws, and the law does not allow a later fact, a circumstance or matter subsequent, to extend or amplify an offence. See *Numquam crescit...* An act legal at the time when it was done should not be made unlawful by a new enactment.

No suitor however has a vested interest in the course of procedure, if during his litigation the procedure is changed, provided that no injustice be done (*Costa Rica v. Erlanger*, 3 Ch. D. 69). Alterations in the form of procedure are always retrospective unless there be some good reason to the contrary; and so are alterations in the law of evidence in matters both civil and criminal (*Gardner v. Lucas*, 3 App. Cas. 603).

The general rule is that Acts are prospective, not retrospective, in their operation. To this rule, there are two exceptions—(a) when Acts are expressly declared to be retrospective, (b) when they

only affect the procedure of the Court (*Jannamal Jimal v. Muktabai*, 14 Bom. 516; *Jogessurdas v. Aisani*, 14 Cal. 553; *Tupsee Singh v. Ramsarun*, 15 Cal. 376; *Papa Sastrial v. Anuntarama*, 3 Mad. 38, following *Wright v. Hale*, 6 H. & N. 227; *Hajrat Akramnissa v. Valiulnissa*, 18 Bom. 429; *Rongai v. Empress*, 9 Cal. 513; *Gangaram v. Punamchand*, 21 Bom. 822; *Balkrishna v. Bapu Yesaji*, 19 Bom. 204).

The general principle is that rights already acquired shall not be affected by the retro-action of a new law. Rules as to procedure are an exception. The law as to the acquisition of rights is that prevailing at the period of the arising of the matters of fact which generate them. Their enforcement must be according to the rules of process at the period of the suit. Care must, however, be taken to distinguish between laws which are merely *procedural* and such as are really *material* (*Lee Morris v. Samba Murthi Rayar*, 6 Mad. H. C. 122).

The general rule (as laid down in *Reg. v. Dorabji*, 11 Bom. H. C. R. 117) that "an Act of limitation, being a law of procedure, governs all proceedings, to which its terms are applicable, from the moment of its enactment except so far as its operation is expressly excluded or postponed," admits of the qualification that when the retrospective effect of a statute of limitation would destroy vested right or inflict such hardship or injustice as could not have been within the contemplation of the legislature, then the statute is not, any more than any other law, to be construed retrospectively (*Khusalbai v. Kabhai*, 6 Bom. 26).

Under the provisions of the Stamp Act, the duty chargeable on an insufficiently stamped document must be decided with reference to the Act in force at the date of the execution of the document, but the penalty leviable is determined in all cases with reference to the stamp law in force when such penalty is to be determined (*Reference*, 5 Mad. 374).

In connection with this maxim see ss. 6, 7 and 8 of the General Clauses Act X of 1897.

See *Leges et constitutiones...*

Nova disseisina. Novel disseisin. See *Assisa nova...*

Novae narrationes. New counts.

Nova statuta. The statutes beginning with Edward III. See *Vetera statuta*.

Novatio. Novation *i. e.*, substituting a new for an old debt.

Novatio non præsimitur. Novation is not to be presumed.

Novis injuriis emersis nova constituere remedia. To enact fresh remedies for offences newly risen.

Novitas incognita, disciplina, ut solita armis decerni jure terminarentur. It was consi-

dered a novelty of an unknown order, that disputes which were usually decided by arms should now be decided by law.

Noviter ad notitiam percenta. A matter having now come to the knowledge of the party. Matters newly come to the knowledge of a party after the pleadings are closed.

Novum judicium non dat novum jus, sed declarat antiquum; quia judicium est juris dictum, et per judicium jus est noviter revelatum quod diu fuit velatum. A new adjudication does not make a new law, but declares the old; for adjudication is the utterance of the law, and by adjudication the law is newly revealed which was for a long time hidden. In *Muni Reddy v. Venkata Reddy* (3 Mad. H. C. R. 241) it was observed that the High Court does not by its decisions make the law; it merely declares what the law has been and is.

See *Omnis innovatio...*

Novus homo. A new man. A pardoned criminal; a discharged insolvent.

Nova caput sequitur. Guilt follows the principal. Where a slave did any damage, his master became liable therefor in a noxal action (*noxalis actio*) to the injured; and this liability attached to the master for the time being, *i. e.*, followed the principal (*caput*). The master might deliver up the slave as a *nova* and so discharge himself of liability.

Noxalis actio. A noxal action. An action for damages by irrational animals. See *Nox caput...*

Nuces colligere. To collect nuts. This was formerly one of the works or services imposed by lords upon their inferior tenants.

Nuda detentio. See *Possessio civilis*.

Nuda pactio obligationem non perit. A bare promise will not create an obligation.

Nudi consensus obligatio contrario consensu dissolvitur. An obligation of mere consent is put an end to by a contrary consent. See *Nihil tam naturali...*

Nudum dominium. Bare ownership.

Nudum pactum. A bare or naked agreement, *i. e.*, one not under seal, and made without consideration, upon which no action will lie. A void agreement. See *Ex nudo pacto...*

Nudum pactum est ubi nulla subest causa præter conventionem; sed ubi subest causa, fit obligatio, et parit actionem. A naked contract is where there is no consideration except the agreement; but where there is a consideration, it becomes an obligation, and gives a right of action.

Nudum pactum ex quo non oritur actio. A naked or bare agreement out of which no cause of action arises.

Nul agard. No award. See *Nul tiel agard*.

Nul charter, nul vende, ne nul done vault perpetualment, si le donor n'est seise al temps

de contracts de 2 droits, sc. del droit de possession, et del droit de propriete. No grant, no sale, no gift, is valid for ever, unless the donor, at the time of the contract, is seised of two rights; namely, the right of possession, and the right of property.

Nul disseisin. A plea in real actions that there was no disseisin; a species of the general issue.

Nulla bona habet. He has no goods. A return made by a sheriff to a *fi. fa.* attachment, &c., when there is no property to distrain upon.

Nulla bona testatoris nec propria. That he has no goods or chattels of the testator. Used when an executor or administrator has no goods of the testor in his possession on a decree being sought to be executed against the goods of the testator.

Nulla bona vel catalla ad valorem. No goods or chattels to the value.

Nulla impossibilia aut inhonesta sunt presumenda; vera autem et honesta et possibilia. Impossibilities or dishonesty are not to be presumed; but truth, and honesty, and possibility.

Nulla intelligitur mora ibi fieri ubi nulla petitio est. No delay of payment is meant to have been made when there has been no demand.

Nullam iniquum in jure presumendum est. No injustice is to be presumed in the law. See *Actus curia*...

Nulla pactione effici potest ut dolus præstetur. I cannot effectually contract with any one that he shall charge himself with the fraud which I commit. No contract can be entered into with one that he shall charge himself with the faults of another. A man cannot validly contract that he shall be irresponsible for his own fraud. Neither will the law permit a person who enters into a binding contract, to say, by a subsequent clause, that he will not be liable to be sued for a breach of it (*Kelsall v. Tyler*, 11 Exch. 534). See *Nullus commodum*...

So, with reference to a provision in a foreign policy of insurance against all perils of the sea, *nullus exceptis*, nothing excepted, it was observed, that although there was an express exclusion of any exception by the terms of the policy, yet the reason of the thing engrafts an implied exception even upon words so general as these; as for example, in the case of damage occasioned by the wilful fault of the assured; it being a general rule that insurers are not liable when loss or damage happens by the fraud of the assured, from which rule it is not permissible to derogate by any pact to the contrary (5 M. & S. 466; *Trinder v. Thames, &c., Ins. Co.*, 1898, 2 Q. B. 114; 67 L. J. Q. B. 666; *Shaw v. G. W. R. Co.*, 1894, 1 Q. B. 373).

Where a bill of lading contained the following condition, "The company's liability shall cease as soon as the packages

are free of the ship's tackle, after which they shall not be responsible for any loss or damage, however caused. If stored in receiving ship, godown, or upon any wharf, all risks of fire, dacoity, vermin, or otherwise, shall be with the merchant," held, that the general words "or otherwise" contained in the bill of lading, could not be read so as to cover wilful misconduct on the part of the defendants' servants, and general words are not read with such an extended meaning (*British India Steam Navigation Co. v. Ratansi*, 22 Bom. 184).

The words "loss, destruction or deterioration" in s. 75 of the Indian Railways Act (IX of 1890) include loss caused by the criminal misappropriation of the parcel by a servant of the railway administration in charge thereof (*Balaram Harichand v. The S. M. Railway Co.*, 19 Bom. 159).

But held in *Deputy Post Master of Bareilly v. Earle* (3 N.-W. P. 195) that an ordinary bailee for conveyance of goods may limit his liability by conditions provided they are not repugnant to public policy or positive law; and a condition that he will not be responsible for loss occasioned by the negligence of his servants is certainly not repugnant to positive law, nor a condition repugnant to public policy.

Nulli differemus justitiam. To no one should we delay justice.

Nullius filius. The son of no person; a bastard; a natural child.

Nullius in bonis. In the goods of no one; among the possessions of no one. The property of no one.

Nullius proprietas. The property of no one. See *Res nullius*.

Nulli vendimus, nulli negabimus aut differemus revum vel justitiam. To no one should we sell, or deny or delay right or justice. See *Justitia debet esse*...

Nullum arbitrum. The usual plea of the defendant sued on an arbitration bond, for not abiding by an award, that there was no award made. See *Nul tiel agard*.

Nullum crimen majus est inobedentiâ. No crime is greater than disobedience.

Nullum exemplum est idem omnibus. No example is the same in every part.

Nullum iniquum est presumendum in jure. No inequity is to be presumed in law.

Nullum medicamentum est idem omnibus. No medicine is the same to all.

Nullum simile est idem nisi quatuor pedibus currit. No like is identical, unless it run on all fours.

Nullum tempus aut locus occurrit regi. No time or place affects the king, or the rights of the crown. This is founded on the supposition that in the king there can be no negligence or laches, and therefore no delay

will bar his right; for the law intends that the king is always busied for the public good, and therefore has not leisure to assert his right within the time limited to his subjects. See *Rex semper presumitur...*

This maxim applies also to criminal prosecutions which are brought in the name of the king, and therefore by common law, there is no limitation in treasons, felonies and misdemeanours. Thus a man may be convicted of murder at any distance of time within his life after the commission of the crime. But this maxim is subject to any express provisions by statute to the contrary, and holds goods only where the legislature has fixed no limit of time for enforcing the right. See the Ind. Lim. Act XV of 1877, Sch. II., Art. 149, which relates to *suits*. The enforcement of rights already decreed (*i. e.*, the recovery of certain costs) does not constitute a public right, enabling the Government to sue notwithstanding the lapse of time (*Govt. of Bengal v. Shuruffutonnissa*, 3 W. R. P. C. 31; 8 Moo. I. A. 225; 1 Suth. P. C. 405). This maxim is a rule of Hindu and Mahomedan Law, as well as the English Law (*Govt. of Bombay v. Haribhai*, 12 Bom. H. C., Ap., 225).

Nullus alius quam rex possit episcopo demandare inquisitionem faciendam. No other than the king can command the bishop, to make an inquisition.

Nullus clericus nisi caudidicus. No clergyman is considered as such without a knowledge of the law.

Nullus commodum capere potest de injuria sua propria. No one can take advantage of his own wrong.

This maxim which is based on elementary principles, is fully recognized in Courts of law and of equity. Courts do not help him who offends against law, *frustra legis auxilium quaerit qui in legem committit*; wherefore A shall not have an action of trespass against B who lawfully enters to abate a nuisance caused by A's wrongful act (*Perry v. Fitzhove*, 8 Q. B. 757).

In contracts, it is contrary to justice that a party should avoid his own contract by his own wrong. He who prevents a thing from being done shall not avail himself of the non-performance he has occasioned (*Ind. Con. Act IX of 1872*, ss. 33, 39, 53 and 54). Again where a creditor refuses a tender sufficient in amount, and duly made, he cannot afterwards, for purposes of oppression or extortion, avail himself of such refusal; and the tender operates in bar of any claim for damages and interest for not paying or for detaining the debt, and also of the costs of an action brought to recover the demand (*Smith v. Manners*, 5 C. B. N. S. 636).

If a bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods in such a manner that it is impossible to separate them, the bailor is

entitled to be compensated by the bailee for the loss of the goods (*Ind. Con. Act IX of 1872*, s. 157; *Lupton v. White*, 15 Ves. 442; 10 R. R. 94). "At law fraud destroys rights—If I mix my corn with another's, he takes all, but if I induce another to mix his corn with mine, I cannot then insist on having the whole; the law in that case does not give me his corn" (*Per Lord Redesdale, Bond v. Hopkins*, 1 Scho. & Lefr. 433; *per Lord Campbell, Aldridge v. Johnson*, 7 E. & B. 899).

The maxim, however, goes only so far as to undo the advantage gained, where that can be done, and not to the extent of taking away a right previously possessed (*Hooper v. Lane*, 6 H. L. Cas. 443; *Ockford v. Freston*, and *Chapman v. Freston*, 6 H. & N. 466, 172, 480). So, though a man might be indicted at common law for a forcible entry, he could not be turned out, if his title were good.

The maxim does not apply where the right of a third party is to be affected. A obtains goods from B under a contract of sale, procured by A from B by fraud. A then sells to C, C may retain the goods (*White v. Garden*, 10 C. B. 919; *Ind. Con. Act IX of 1872*, s. 108).

See *Allegans contraria... Dolus versatur... Nemo allegans...*

Nullus dicitur accessorius post feloniam, sed ille qui novit principalem feloniam fecisse, et illum recepit et confortavit. No one is called an accessory after the fact but he who knew the principal to have committed a felony, and received and comforted him.

Nullus dicitur felo principalis nisi actor; aut qui præsens est, abettans aut auxilians ad feloniam faciendam. No one is called a principal felon except the party actually committing the felony, or the party present aiding and abetting in its commission.

Nullus videtur dolo facere qui suo jure utitur. No one is considered to act with guile who uses his own right. No one is deemed to be guilty of an offence who exerts his legal rights, See *Acta exteriora... Executio juris...*

Nul prendra advantage de son tort demesne. No one shall take advantage of his own wrong. A wrongful act shall not be allowed to conduce to the advantage of the party committing it. See *Nullus commodum...*

Nul sans damage avera error ou attain. No one shall have error or attain unless he has sustained damage.

Nul tiel agard. No such award. A plea by a defendant denying, in an action on an award, that any such award was made.

Nul tiel record. No such record. A plea denying the existence of a record alleged by the opposite party.

Nul tort. No wrong. A plea in a real action, that no wrong was done.

Nummus est mensura rerum commutandarum. Money is the measure of things to be exchanged.

Nunc pro tunc. Now for then; meaning that a judgment is entered, or document enrolled so as to have the same legal force and effect as if it had been entered or enrolled on some earlier day on which it should properly have been done. Where a proceeding, &c., has been delayed by the action of the Court, or any like ground, the Court may allow it to be dated as if it had taken place or been delivered on the earlier date. See *Actus curiæ*...

Nundinatio. (*Rom. L.*) Trafficing at fairs.

Nunquam concluditur in falso. We never conclude with a fiction.

Nunquam crescit ex post facto præteriti delicti æstimatio. The estimation of a past offence is never increased by an after fact. A later fact will not be allowed to extend or amplify a past offence. The heinousness of a past offence is never increased by a fact which has happened afterwards. See *Nova constitutio*...

Nunquam custodia alicujus de jure alicui remanet, de quo habentur suspicio, quod possit vel velit aliquod jus in ipsâ hereditate clamare. The charge of a ward is never entrusted by law to a person of whom there is any suspicion that he could or would claim any right in his inheritance. See the Guardians and Wards Act VIII of 1890, s. 17, cls. 1 and 2. See also the Code of Civ. Pro. XIV of 1882, ss. 445, 446, 456 and 457.

Nunquam decurritur ad extraordinarium sed ubi deficit ordinarium. Recourse is never had to what is extraordinary, till what is ordinary fails.

Nunquam indebitatus. Never indebted. A common defence to an action of debt on a simple contract.

Nunquam nimis dicitur quod nunquam satis dicitur. What is never sufficiently said is never said too much.

Nunquam non paratus. Never unprepared. Always ready.

Nunquam res humana prosperè succedunt ubi negliguntur divina. Human things never prosper where divine things are neglected.

Nuper obiit. He died lately. An obsolete writ that lay for a sister or co-heir who was deprived by another co-heir, for recovery of land, on the death of their common ancestor.

Nuper vicecomitem. The late sheriff. Where goods have been taken by a late sheriff on a *fi. fa.*, and he has returned that some remain on his hands for want of buyers, the new sheriff was by this auxiliary writ directed to compel the late sheriff to sell the goods at all costs and hazards.

Nuptias non concubitus sed consensus facit. Not cohabitation or physical intercourse, but consent, constitutes marriage. See *Consensus non*...

O

Obedientia. This word in the canon law is used for an office, or the administration of it; and as some of these offices consisted in the collection of rents or pensions, rents were called *obedientia*.

Obedientia est legis essentia. Obedience is the essence of law.

Obit. He died. The anniversary of any person's death was called the *obit*.

Obiter. Incidentally.

Obiter dictum. A saying by the way. An incidental opinion. A dictum of a judge on a point not directly relevant to the case before him. The expression by a judge of an opinion on a point of law arising during the hearing of a case, which however, is not necessary for the decision of that case, and which is, therefore, not binding on other judges, as distinguished from a *judicial dictum*, which is necessary to the judgment. An *obiter dictum* is nothing more than the saying of him who gives it, a *gratis dictum*.

Obligant, sed not obligantur. They bind others, but are not bound themselves. Applied to contracts entered into by infants.

Obligatio. A bond containing a penalty with a condition annexed for the payment of money, performance of covenants, or the like. The operative part of a bond.

Obligatio est juris vinculum, quo necessitate astringimur alicujus solvenda rei secundum nostræ civitatis jura. An obligation is a tie of law, which binds us to render something according to the rules of our civil law.

Obligatio mandati consensu contrahentium consistit. The authority of an agent to contract for his principal rests on the consent of his principal.

Obliqua oratio. The manner of reporting a speech in the third person, in which the pronoun 'he' and not 'I' stands for the speaker in giving his words. It is opposed to *oratio directa*, which is in the first person and in which the very words of the speaker are given.

Ob præclara in rem publicam merita, et partam bello gloriam. On account of illustrious services to the state and glory obtained in war. This was an ancient tenure in Scotland called *Blanch-tenure* corresponding to free and common socage in England.

Obscurum per obscurius. To explain what was obscure by something more obscure.

Obstetricante manu. With the hand of a midwife.

Obtemperandum est consuetudini rationabili tanquam legi. A reasonable custom is to be obeyed like law. See *Optimus interpres...*

Occasio. An impediment. A tribute which a lord imposed on his vassals or tenants for his necessity; or the cause of pretext for such imposition.

Occasione detentionis debiti ore tenus. On an occasion of withholding a debt by word of mouth.

Occultatio thesauri inventi est fraudulosa. The concealment of discovered treasure is fraudulent. See the *Treasure Trove Act VI of 1878*. Also the *Ind. Con. Act IX of 1872*, ss. 71, 168 and 169; and the *Ind. P. C. XLV of 1830*, s. 408, expl. 2.

Occupavit. He occupied. A writ that lay for him who was ejected out of his land in time of war; as the writ of *novel disseisin* lay for one disseised in time of peace.

Oculus episcopi. Under the inspection of the bishop.

Oderunt peccare boni virtutis amore; oderunt peccare mali, formidine pœnæ. Good men hate sin through love of virtue; bad men through fear of punishment.

Odio et atia. See *De odio...*

Odiosa et inhonesta non sunt in lege præsumenda; et in facto quod se habet, ad bonum et malum, magis de bono quam de malo præsumendum est. Odious and dishonest things are not to be presumed in law; and in an act which partakes both of good and bad, the presumption is more in favour of what is good, than what is bad.

Officiu judicialia non concedantur ante quam vacent. Judicial offices are not conceded before they become vacant.

Officiariis non faciendis vel amovendis. A writ directed to the magistrates of a corporation, requiring them not to make such a man an officer, or to put one out of the office he hath, until inquiry is made of his manners, &c.

Officina gentium. The shop or mint of nations.

Officina justitiæ. The shop or mint of justice. An expression applied to the court of Chancery wherein the king's writs were framed.

Officio magistratus non debent esse venalia. The offices of magistrate ought not to be sold.

Officii conatus si effectus sequatur. The attempt endangers if an effect follow.

Officium nemini debet esse damnosum. An office or duty ought to be injurious to no one, i. e., a man ought to be indemnified against any loss incurred in the execution of his duty.

Omissio eorum quæ tacite insunt nihil operatur. The omission of those things which are silently understood is of no consequence.

Omne actum ab intentione agentis est judicandum. A voluntee proceeds causa vitii atque virtutis. Every act is to be estimated by the intention of the doer. The cause of vice and virtue proceeds from the will. See *Actus non facit...*

Omne crimen ebrietas et incendit et delegit. Drunkenness incites and brings to light all crimes.

Omne jus aut consensus fecit, aut necessitas constituit, aut firmavit consuetudo. Every right is either made by consent, or is constituted by necessity, or is established by custom.

Omne magis dignum trahit ad se minus dignum, quantum minus dignum sit antiquius. Every thing more worthy draws to it the less worthy, although the less worthy be the more ancient.

Omne magnum exemplum habet aliquid ex iniquo, quod publicâ utilitate compensatur. Every great example has some portion of evil which is compensated by the public utility.

Omne majus continet in se minus: minus in se complectitur. The greater always contains in itself the less; the less is included in it.

If a debtor tender more than he owes, it is good, and the creditor ought to accept so much of the sum tendered as is due (*Wade's Case*, 5 Rep. 115; *Dean v. James*, 4 B. & Ad. 516). But if he tender a bank-note or coin, of a larger amount than the sum due, requiring change, that is not a good tender, for the creditor may be unable to take what is due and return the balance (*Betterbee v. Davis*, 3 Camp. 70; 13 R. R. 755; *Robinson v. Cook*, 6 Taunt. 336; 16 R. R. 624), though if he knows the amount due, and is offered a larger sum, and, without any objection on the ground of change, merely makes a collateral objection, the tender is good (*Bevans v. Rees*, 5 M. & W. 308; *Black v. Smith*, Peake, 127; 3 R. R. 661).

A tenant in fee simple, may either grant to another the whole of his estate, or charge it in any manner he thinks fit, or he may create out of it any less estate, or interest; and to the estate or interest thus granted he may annex such conditions, not repugnant to the rules of law, as he pleases. A man having a power may do less than such power enables him to do; for instance, he may lease for fourteen years under a power to lease for twenty one (*Isherwood v. Oldknow*, 3 M. & S. 382; 16 R. R. 305). See *Non debet cui... Cui licet quod...*

But where more is done than ought to be done, that portion for which there was authority shall stand, and the act shall be void *quoad* the excess only. See *Quando plus fit...*

So, in criminal cases, when a person is charged with an offence, consisting of several particulars, a combination of some

only of which constitutes a complete minor offence, and such combination proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. When a person is charged with an offence, and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it (*Crim. Pro. Code V of 1898, s. 238*).

Omne majus dignum continet in se minus dignum. The more worthy contains in itself the less worthy.

Omne quod solo inædificatur solo cedit. All that is built on the soil, belongs to, or follows, the soil. See *Quicquid plantatur...*

Omne sacramentum debet esse de certâ scientiâ. Every oath ought to be of certain knowledge.

Omnes æs alienum, quod manente societate contractum est, de communi solvendum est, licet posteaquam societas distracta, solutum sit. Every debt which has been contracted during the continuance of a partnership must be paid by the firm generally, notwithstanding the partnership be afterwards dissolved. See the *Ind. Con. Act IX of 1872, ss. 249, 253 (2), and 262*.

Omnes licentiam habere his, quæ pro se introdicta sunt renunciare. Every man may renounce a benefit which the law has conferred upon him. Every one has a right to renounce those things which have been granted for his own benefit. See *Quilibet potest... Juri pro se...*

Omnes nova constitutio futuris temporibus formam imponere debet non præteritis. Every new enactment should affect future, not past times.

Omnes res suas liberas et quitas haberet. That he should hold all his property free and undisturbed.

Omnes sorores sunt quasi unus hæres de unâ hereditate. All sisters are, as it were, one heir to one inheritance. Where a man or woman, seised of lands or tenements in fee-simple or fee-tail, hath no issue but daughters, and dies, and the tenements descend to such daughters, then they are but as one heir to their ancestor.

Omnes subditi regis servi. All subjects are the king's servants. See *Rex non debet esse...*

Omne testamentum morte consummatum est. Every will is completed by death. Every will or testament takes effect upon the death of the party executing it. See *Voluntas testatoris...*

Omnia catalla cedant defuncto: salvis uxori ipsius et pueris suis rationabilibus partibus suis. That all chattels of the deceased pertain to him, saving to his wife and his children their just and reasonable proportions.

Omnia delicta in aperto leviora sunt. All crimes done openly are lighter,

Omnia placita. All pleas.

Omnia præsumuntur contra spoliatores. All things are presumed against a wrong-doer. Every presumption is made against a wrong-doer.

A maxim available in the estimate of damages, and also in judging the evidence adduceable in support of or in opposition to a demand. The effect of the maxim is to assess the damage at the highest, and to read the evidence (or want thereof) most strongly against the destroyer (*spoliator*) or wrong-doer.

If a man by his own tortious act withhold the evidence by which the nature of his case would be manifested, every presumption to his disadvantage will be adopted (*Ind. Evi. Act I of 1872, s. 114, illus. [g]; Smith L. C., 10th Edn., p. 853*). If a man refuses to answer a question, which he is not compelled to answer by law, the Court may presume that the answer, if given, would be unfavourable to him (*Ibid., illus. [h]*). Where a party has the means in his power of rebutting and explaining the evidence adduced against him, if it does not tend to the truth, the omission to do so furnishes a strong inference against him (*Attorney-General v. Windsor, 24 Beav. 679*). Thus, where a person who has wrongfully converted property (*e.g.*, a jewel) will not produce it, it shall be presumed as against him to be of the best description (*Armory v. Delamirie, 1 Stra. 504, followed in Mortimer v. Crudock, 12 L. J. C. P. 166*). But if the evidence alleged to be withheld is shown to be unattainable, the presumption *contra spoliatores* ceases (*Doe v. Ross, 7 M. & W. 121*).

In *Wardour v. Berisford* (1 Vern. 452) it was proved that the defendant had wrongfully opened a bundle of papers relating to the account which had been sealed up and left in his hands; that he had altered and displaced the papers; and that it could not be known what papers might have been abstracted. The Court, upon these facts, disallowed defendant's whole demand, although the Lord Chancellor declared himself satisfied, as indeed the defendant swore, that all the papers entrusted to the defendant had been produced, the ground of the decision being that *in odium spoliatoris omnia præsumuntur*.

Applying this maxim, the High Court held that where a vessel was seized on suspicion of having a greater quantity of salt on board than was allowed by its permit, and immediately afterwards a number of men boarded the boat, and, with the assistance of the agent of the owner, threw a considerable quantity of salt overboard, a presumption arose that there was an excess of salt on board at the time of the seizure beyond the amount allowed by the permit (*Framji Hormusji v. Commr. of Customs, 7 Bom. H. C., A. C., 89*).

Where the plaintiffs, the proprietors of an hotel, sued the defendant for a declara-

tion of their right of way over the defendant's land, but refused to put in evidence the deed under which they became owners of the hotel property, *held*, that owing to the non-production by the plaintiffs of their title-deeds it must be presumed as against them that the evidence afforded thereby would be unfavourable to their claim (*Wutzler v. Sharpe*, 15 All. 270).

See *Nullus in commodum...*

Omnia præsumuntur legitime facta donec probetur in contrarium. All things are presumed to be legitimately done until the contrary is proved.

Omnia præsumuntur rite et solenniter esse acta donec probetur in contrarium. All things are presumed to have been rightly and duly performed until the contrary is proved. See *Ex diturnitate...*

It is a maxim of law to give effect to everything which appears to have been established by a considerable course of time, and to presume that what has been done was done of right, and not of wrong (*Per* Pollock, C. B., 2 H. & N. 628). It is a most convenient thing that every presumption, not wholly irrational, should be made in favour of long continued enjoyment (*Mayor of Penryn v. Best*, 3 Ex. D. 299). The law will presume a state of things to continue which is lawful in every respect; but if the continuance is unlawful, it cannot be presumed (*Price v. Worwood*, 4 H. & N. 514). The maxim applies as well where matters are in contest between private persons, as to matters public in their nature (*Reed v. Lamb*, 6 H. & N. 85; *Dawson v. Surseyor for Willoughby*, 5 B. & S. 924).

By a lease, a lessee covenanted that he would not use the house leased otherwise than as a dwelling house. The house was converted into a public house and a grocery shop; and the lessor, with full knowledge of this fact, continued to accept the rent for more than twenty years. In an action of ejectment for breach of the covenant brought by a purchaser of the house, *held*, that the user of the premises in their altered state for more than twenty years, with the knowledge of the lessor, was evidence from which the jury might presume that the alteration was made with his license (*Gibson v. Doeg*, 2 H. & N. 615).

Where any document purporting or proved to be thirty years old is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested (*Ind. Evi. Act* 1 of 1872, s. 90). For presumptions as to other public and private documents, see ss. 79 to 90 of that Act. Generally, the Court

may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case. See s. 114 of the Act and illustrations thereto.

The following may be taken as general presumptions of law illustrating the maxim. That a man, in fact acting in a public capacity, was properly appointed and is duly authorized so to act (*R. v. Verelst*, 3 Camp. 432; 14 R. R. 775); that in the absence of proof to the contrary, credit should be given to public officers who have acted, *prima facie*, within the limits of their authority, for having done so with honesty and discretion (*Earl of Derby v. Bury Imp. Commrs.*, L. R. 4 Ex. 226); that the records of a Court of Justice have been correctly made (*Reed v. Jackson*, 1 East, 355; 6 R. R. 233) according to the rule, *res judicata pro veritate accipitur*; that judges and jurors do nothing causelessly and maliciously (*Sutton v. Johnstone*, 1 T. R. 503; 1 R. R. 257); that the decisions of a Court of competent jurisdiction are well founded, and their judgments regular (*Lytleton v. Cross*, 3 B. & C. 327; 27 R. R. 370); and that facts without proof of which the verdict could not have been founded, were proved at the trial (*Spieres v. Parker*, 1 T. R. 145; 1 R. R. 165).

K was convicted of having intentionally omitted to inform the police of the presence of V, a proclaimed offender, at a certain village. It was presumed by the Court that V was a proclaimed offender, because it was proved that the property of V had been attached under the provisions of s. 88 of the Code of Crim. Pro., 1882 (s. 88 of the new Code V of 1898). *Held*, that the prosecutor was bound to prove the fact of proclamation (*In re Pundya Nayak*, 7 Mad. 436).

An appellate Court ought not to interfere with the judgment of the lower Court until it is perfectly satisfied that the conclusion arrived at by the Court below is erroneous. It is a presumption of law that the judgment appealed against is right until the contrary is shown, and when there is a doubt about it, the benefit of that doubt should be given by the appellate Court to the respondent (*Tayubunnissa Bibi v. Kuwar Sham Kishore*, 4 B. L. R. A. C., 621).

The consideration of an objection under s. 278 of the Civ. Pro. Code having first been entertained and adjourned by an additional Subordinate Judge, subsequently came before the Subordinate Judge, who struck off the case for default. No order under s. 25 transferring the case to the Subordinate Judge was on record, nor was it otherwise shown how he obtained jurisdiction to deal with it. *Held*, that the High Court, in the exercise of its revisional powers under s. 622 of the Code, should not presume that the Subordinate Judge had

taken up the case without jurisdiction. That the proper remedy of the petitioner was under s. 103 read with s. 647, or a suit under s. 283; and that the High Court should not interfere in revision (*Sheo Prasad Singh v. Kastur Kuar*, 10 All. 113).

Where a Subordinate Judge registered an application received in his absence by his karkun, his successor is justified in presuming that the Court karkun had been authorized to receive the application in the Judge's absence; the case being one to which the maxim *omnia præsumuntur rite esse acta* applies (*Antaji v. Kallapa*, P. J., 1876, p. 2).

See *Ubi quid generaliter... Quod fieri debet facile...*

Omnia præsumuntur solenniter esse acta. All things are presumed to have been done rightly.

Omnia quæ jure contrahuntur contrario jure pereunt. All things which are contracted by law perish by a contrary law.

Omnia quæ movent ad mortum sunt Deo dando. All things which are instrumental to death, are deodands. Any personal chattel which was the immediate occasion of the death of any reasonable creature, was formerly forfeited to the king to be applied to pious and charitable uses. No deodand was due where an infant under the age of discretion was killed by a fall from a cart, or horse, or the like, not being in motion; whereas, if an adult person fell thence, and was killed, the thing was certainly forfeited. In cases of homicide, the instrument of death and the value were presented and found by the grand jury, that the crown might claim the deodand. Now abolished.

Omnia quæ sunt uxoris sunt ipsius viri; non habet uxor potestatem sui, sed vir. All things which belong to the wife belong to the husband; the wife has no power over herself, but the husband. This was the doctrine of the *Common Law*. *Equity* has, however, from very early times, by the doctrines of 'separate uses,' 'trusts' and 'equity to a settlement,' very largely modified the common law in favour of the wife; and the *statute law* has by the Married Women's Property Acts (1870 and 1882) almost completely abolished the *property* distinction between an unmarried and a married woman.

Omnia rite acta præsumuntur. All things are presumed to have been rightly done.

Omni exceptione majus. Above all exceptions.

Omnis actio est loquela. Every action is a complaint.

Omnis conclusio boni et veri judicii sequitur ex bonis et veris præmissis et dictis juratorum. Every conclusion of a good and true judgment arises from good and true premises and the words of the jury.

Omnis consensus tollit errorem. Every assent removes error.

Omnis innovatio plus novitate perturbat quam utilitate prodest. Every innovation occasions more harm by its novelty, than benefit by its utility. See *Periculosum...*

Whenever a standing rule of law, of which the reason, perhaps, could not be remembered or discerned, has been wantonly broken in upon by statutes or new resolutions, the wisdom of the rule has in the end appeared from the inconveniences that have followed the innovation; and the sages of the law have therefore always suppressed new and subtle inventions in derogation of the common law. It is then an established rule to abide by former precedents, *stare decisis*, where the same points come again in litigation. See *De similibus...*

Where a rule has become settled law, it is to be followed, although some possible inconvenience may grow from a strict observance of it, or although a satisfactory reason for it is wanted, and although the principle and policy of the rule may be questioned (*Per Tindal, C. J., Mirehouse v. Rennell*, 8 Bing. 557; 36 R. R. 139). If there is a general hardship affecting a general class of cases, it is a consideration for the legislature, not for a Court of Justice.

The rule *stare decisis* does, however, admit of exceptions, where the former decision is most evidently contrary to reason. But, even in such cases, subsequent judges do not pretend to make a new law, but to vindicate the old one from misrepresentation. For if it be found that the former decision is manifestly absurd or unjust, it is declared, not that such a sentence was *bad law*, but that it was *not law*; that it is not the established custom of the realm, as has been erroneously determined. See *Novum judicium...*

See *Communis error...*

Omnis interpretatio si fieri potest ita fienda est in instrumentis, ut omnes contrarietates amoveantur. Every interpretation, if it can be done, is to be so made in instruments, that all contradictions may be removed.

Omnis poena corporalis, quamvis minima, major est omni poena pecuniaria quamvis maxima. The very slightest corporal punishment falls more heavily, than the most weighty pecuniary punishment.

Omnis priatio præsupponit habitum. Every privation presupposes former enjoyment.

Omnis querela et omnis actio injuriarum limitata est infra certa tempora. Every plaint and every action for injuries is limited within certain times, *i. e.*, is governed by the law of Limitation. See Act XV of 1877.

Omnis ratihabitio retro-trahitur et mandato priori æquiparatur. A subsequent ratification or confirmation has a retrospective effect, and is equivalent to a prior command.

Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect either to ratify or to disown such act. If he ratify them the same effect will follow as if they had been performed by his authority. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective. A person ratifying an unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part. An act done by one person on behalf of another without such other person's authority, which if done with authority would have the effect of subjecting a third person to damages, or of determining any right or interest of a third person, cannot by ratification be made to have that effect (*Ind. Con. Act IX of 1872*, ss. 196 to 200).

But a person cannot ratify a criminal act so as to absolve the doer from liability. It seems safe to say that a person whose signature is forged cannot ratify the act so as to protect the forger from the charge of forgery (*Per Lord Blackburn*, 6 App. Cas. 99); and a contract by him that he will not dispute the signature in consideration of the forger not being prosecuted is illegal and creates no estoppel as between the parties thereto (*Brook v. Hook*, L. R. 6 Ex. 89).

A person cannot ratify an act if, at the time of the act, he had no capacity to command or to do it (*Riche v. Ashbury Co.*, L. R. 7 H. L. 653); and there can be no ratification of an act by a person who, when the act was done, had no existence actually or in contemplation of law. Thus a corporation cannot ratify a contract which a person purported to make on its behalf before its incorporation (*Re Empress Engineering Co.*, 16 Ch. D. 125; *Re Northumberland Avenue Hotel Co.*, 33 *Ibid.*, 16). But an administrator whose authority, when he has been appointed, relates back to the time of the testator's death, can ratify a sale of the intestate's property made before his appointment by a person purporting to sell as agent for whatever person might happen to be the intestate's legal representative (*Foster v. Bates*, 12 M. & W. 226).

The ratification by a company of particular acts done by its directors in excess of the authority given them by the articles of the company does not extend the powers of the directors so as to give validity to acts of a similar character done subsequently (*Irvine v. Union Bank of Australia*, 3 Cal. 280, P. C.).

Omni suspitione majus. Above all suspicion.
Omnium contributione sarcitur quod pro omnibus datum est. That which is given for all is recompensed by the contribution of all. This is a principle of the law of general average.

Omnium rerum immunitatem. An immunity of all things.

Omnium rerum quarum usus est, potest esse abusus, virtute solo excepta. There may be an abuse of every thing of which there is a use, virtue alone excepted.

Onera Episcopalia. See *Episcopalia*.

Onerando pro ratâ portionis. A writ that lay for a joint tenant or tenant in common who was distrained for more than his proportion of the land came to.

Onerari non debet. He ought not to be charged or burdened. An old form of commencement of a pleading.

Oneratur, nisi habeat sufficientem exonerationem. Let him be charged, unless he have sufficient excuse. Abrev. *O. Ni*. A mark formerly set against a sheriff when he had entered into his accounts in the Exchequer, to indicate that he thenceforth became the king's debtor for such accounts.

Onerosa causa. See *Lucrativa causa*.

Onus. Burden; obligation; weight.

Onus episcopale. Ancient customary payments of the clergy to their diocesan bishop.

Onus probandi. The obligation or burden of proving; burden of proof.

Operatum factum. Overt act. An open act which by law must be manifestly proved.

Oportet quod certa res deducatur in iudicium. A thing certain must be brought to judgment.

Opposita juxta se posita magis elucescunt. Things opposite are more conspicuous when placed together.

Optima est legis interpretis consuetudo. Custom is the best interpreter of the laws. Where a statute is silent upon some points, usage, if it be not inconsistent with the directions actually given, may well supply the defect; and where a statute uses language of doubtful import, what has been done under it for a long course of years may well give an interpretation to that obscure meaning, reducing uncertainty to a fixed rule (*Per Lord Brougham*, 3 Cl. & F. 354; *Re Mackenzie*, 1899, 2 Q. B. 566).

A uniform and invariable interpretation of any particular statute, extending over centuries, is not to be destroyed or impugned upon any grounds of argument whatsoever, notwithstanding the interpretation does not commend itself as the right one (*Morgan v. Crawshaw*, L. R. 5, H. L. 304).

Held, that although the Collector's Court was the only revenue Court contemplated by Reg. XVII of 1827, since the passing of Act XVI of 1838, the Mamlatdar's Court was always regarded as a revenue Court empowered to deal with a claim to possession, and that, in construing that Act, the maxim *optimus legis interpretis consuetudo*, might be properly applied (*Bapu Khandu v. Baji Jivaji*, 14 Bom. 372). See also

Prakash Chunder Duss v. Tarachand Dass (9 Cal. 82 ; 12 C. L. R. 1) as to the registration of sale certificates.

See *Optimus interpres...*

Optima est lex quæ minimum relinquit arbitrio judicis ; optimus iudex qui minimum sibi. That system of law is best which confides as little as possible to the discretion of a judge ; that judge the best who relies as little as possible on his own opinion. See *Boni iudices est...*

Optimum habemus testem confitentem reum. The best testimony we have is the confession of the accused. See *Confessio, facta...*

Optimus est iudex qui minimum relinquit sibi. He is the best judge who relies least on himself.

Optimus ille, qui minimis urgetur. He is the best who is charged with the least errors.

Optimus interpres rerum usus. Usage or custom is the best interpreter of things.

Custom, *consuetudo*, is a law not written, established by long usage and the consent of our ancestors ; and hence it is said that usage, *usus*, is the legal evidence of custom. Moreover, where a law is established by an implied consent, it is either common law or custom ; if universal, it is *common law* ; if particular to this or that place, then it is *custom*.

In order to make a particular custom good under English Law there are several essentials :—(1) It must have been used so long that the memory of man runneth not to the contrary ; (2) It must have continued without any interruption, for any interruption would cause a temporary cessation of the custom, and the revival would give it a new beginning, which must necessarily be within time of memory, and consequently the custom will be void ; (3) It must have been *peaceably enjoyed and acquiesced in*, not subject to contention and dispute, for all customs owe their origin to common consent ; their being immemorially disputed, either at law or otherwise, is a proof that such consent was wanting ; (4) It must be reasonable ; (5) It must be certain, or capable of being reduced to a certainty (*Lachman Rai v. Akbar Khan*, 1 All. 440) ; therefore a custom that lands shall descend to the most worthy of the owner's blood, is void ; (6) It must, though established by consent, be *compulsory* when established, and not left to the option of every man whether or not he will use it ; so a custom that every man is to contribute towards the maintenance of a bridge at his own pleasure is idle and absurd, and indeed no custom at all ; (7) Customs existing in the same place must be *consistent with each other* ; one custom cannot be set up in opposition to another ; for if both are really customs, then both are of equal antiquity, and both established by mutual consent ; which to say of contradictory customs is absurd ; (8) It must not be opposed to public good, for *malus usus est abolendus*.

A custom is not unreasonable merely because it is contrary to a particular maxim or rule of the common law, for a custom when grounded upon a certain and reasonable cause supersedes the common law. See *Consuetudo ex certa...*

The true and appropriate office of a usage or custom is to interpret the otherwise indeterminate intentions of parties, and to ascertain the nature and extent of their contracts, arising not from express stipulations, but from mere implications and presumptions, and acts of a doubtful or equivocal character ; but it can never be proper to resort to any usage or custom to control or vary the positive stipulations in a written contract, and *à fortiori*, not in order to contradict them. An express contract of the parties is always admissible to supersede, or vary, or control a usage or custom, for the latter may always be waived at the will of the parties.

A custom which is not shown to be either certain or invariable, or so notorious that persons should be held to enter into agreements with reference to it, does not form a good binding custom (*Price v. Browne*, 14 Mad. 420).

Plaintiff brought a suit for *khaz* possession of a tank with a taluk purchased by him, which had been held by the defendant and her predecessors from a time anterior to the grant of the taluk. *Held*, that the relationship of landlord and tenant in which the parties stood did not prevent the application of the maxim *optimus interpres rerum usus*, and it was open to the defendant to show, by evidence as to the nature of the enjoyment, what the origin of the tenure really was (*Nidhikrishna Bose v. Nistarini Dasi*, 13 B. L. R., A. C., 416).

Any usage or custom, by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description may be proved ; provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract (*Ind. Ev. Act I of 1872*, s. 92, prov. 5 ; *Smith v. Ludha Ghellu*, 17 Bom. 129).

In determining whether a disposition of property made by a Mehomedan is or is not a valid *waqif*, the intention of the *waqif* may be interpreted by reference to custom prevailing at the time the *waqif* was made (*Pahul Chund v. Akbar Yar Khan*, 19 All. 211).

A custom which has never been judicially recognised cannot be permitted to prevail against distinct authority (*Narasammal v. Bularamachariu*, 1 Mad. H. C. R. 420 ; *Mathura Naikin v. Esu Naikin*, 4 Bom. 545 ; *Venkat v. Mahalinga*, 11 Mad. 393).

All local customs and mercantile usages shall be regarded as valid, unless they are contrary to justice, equity, or good conscience, or have been declared to be void

by any competent authority (*Punj. Laws Act IV of 1872*, ss. 5 and 7; *Mad. Civil Courts Act III of 1873*, s. 16).

A special usage modifying the ordinary law of succession must be *ancient and invariable*, and must be established to be so by *clear and unambiguous evidence* (*Amrit Nath v. Gauri Nath*, 6 B. L. R., P. C., 232; *Nogendro Narain v. Raghunath*, W. R., 1864, p. 20; *Ramalakshmi v. Sivanath*, 12 B. L. R., P. C., 396; 14 Moo. I. A. 585; *Thakur Durrayao Singh v. Thakur Dari Singh*, 13 B. L. R., P. C., 165).

Immoral customs cannot be recognised (*Mathura Naikin v. Esu Naikin*, 4 Bom. 545; *Ghasiti v. Umrao Jan*; *Ghasiti v. Jaggu*, 21 Cal. 149).

See *Optima est legis...*

Optimus interpretandi modus est sic leges interpretare ut leges legibus concordant. The best mode of interpretation is so to interpret laws that the laws may accord with the laws (*i. e.*, with each other).

Optimus legis interpret consuetudo. Custom is the best interpreter of the laws. See *Optima est legis...*

Optimus statuti interpretatrix est (omnibus particulis ejusdem inspectis) ipsum statutum. The best interpreter of a statute is (all the separate parts being considered) the statute itself.

Optionis legatum. See *Legatum optionis*.

Ordinandi lex. The law of procedure as distinguished from the substantial part of the law.

Ordinatio. Ordinance. A law, decree or statute.

Ordinatio forestæ. A statute made touching matters and causes of the forest.

Ordinatione contra servientes. A writ that lay against a servant for leaving his master contrary to the ordinance or statute 23 & 25 Edw. III.

Ordine placitandi servato, servatur et jus. The order of pleading being preserved, the right is preserved.

Ordines majores et minores. The orders of priest, deacon and sub-deacon, which qualified for presentation and admission to ecclesiastical cures, were called *ordines majores*, the greater orders; and the inferior orders of chanter, psalmist, ostiary, reader, exorcist and acolyte, were called *ordines minores*, the lesser orders.

Ordo curiæ. The order of the court.

Ordo nobilium pluribus gaudet privilegiis. The rank of nobility enjoys many privileges. In cases of treason or felony, a nobleman is tried by his peers, but in mere misdemeanours, he is tried, like a commoner, by a jury. He cannot be arrested in civil cases, but he is not exempted from arrest in criminal matters. A peer loses his nobility by death or attainder.

Ore tenus. By word of mouth; oral.

Origine propria neminem posse voluntate sua eximi manifestum est. It is evident that no one is able, of his own pleasure, to do away with his proper origin. It is a principle of law that a natural born subject of one prince cannot, by voluntary act of his own, put off or discharge his natural allegiance. See *Nemo patriam...*

Origio rei inspicere debet. The origin of a thing ought to be inquired into.

Ostium ecclesiæ. See *Ad ostium...*

Ostium cum dignitate. Ease with dignity.

Ouster le main. Out of the hand. A delivery of lands out of the king's hands by judgment given in favour of the petitioner in a *manstrans de droit*. See *Amoceas manus*, *Monstrans de droit*. A delivery of the ward's lands out of the hands of the guardian on the former arriving at the proper age.

Ouster le mer. Beyond the sea; formerly a cause of excuse or *essoir* if a man appeared not in Court upon summons.

Overt. Open.

Oyer et terminer. To hear and determine. Commission of *oyer et terminer* is a commission granted to judges and others to hear and determine treasons, felonies, etc.

Oyez. Hear ye: pronounced by the criers of the Court "O yes."

P

Paceatur. Let him be freed or discharged.

Paci sunt maxime contraria, vis et injuria. Violence and injury are especially opposed to peace.

Pacis violatio. The breaking of the peace.

Pacta adjecta. Facts or agreements added to a contract. They are either *adjecta ex continenti*, as part and parcel of the contract and *contemporaneously* therewith; or *adjecta ex intervallo*, not contemporaneously with, but some interval of time after, the contract proper.

Pacta conventa. Conditions agreed upon.

Pacta conventa quæ neque contra leges neque dolo malo inita sunt omnimodo observanda sunt. Compacts which are not illegal and do not originate in fraud, must in all respects be observed. See *Modus et conventio...* *Conventio vincit...* *Ex dolo malo...*

Pacta dant legem contractui. The stipulations of parties constitute the law of the contract.

Pacta privata juri publico derogare non possunt. Private compacts cannot derogate from public right. See *Modus et conventio...*

Pacta quæ contra leges constitutionesque vel contra bonos mores fiunt nullam vim habere, indubitati juris est. It is undoubted law that contracts which are opposed to law or the constitutions of the realm, or which are contrary to good morals, shall have no

effect or force. See *Modus et conventio...*
Ex dolo malo...

Pacta quæ turpem causam continent non sunt observanda. Agreements founded on an immoral consideration are not to be observed. See *Ex turpi causa...* *Ex dolo malo...*

Pactio. A bargain or covenant.

Pactis privatorum juri publico non derogatur. Private contracts cannot derogate from public right. See *Modus et conventio...*

Pactio aliquod licitum est, quod sine facto non admittitur. By special agreement things are allowed which are not otherwise permitted.

Pactum constituta pecuniæ. (Rom. L.) An agreement by which a person appointed to his creditor a certain day. An agreement by which a person promises to pay a creditor.

Pactum de non petendo. (Rom. L.) An agreement made between a creditor and his debtor that the former will not demand his debt from the latter, whereby the debtor is freed from his obligation.

Pactum de quota litis. (Rom. L.) An agreement by which a creditor promised to pay a portion of a debt difficult to recover to a person who undertook to recover it.

Pactum illicitum. An unlawful or illicit compact or agreement.

Pais. The people out of whom a jury is taken. See *In pais.*

Paix. Peace.

Palladium. National strength and security.

Pallio cooperire. To cover with a cloak. It was anciently a custom where children were born out of wedlock, and their parents afterwards intermarried, that those children together with the father and mother, stood under a cloth extended while the marriage was solemnized, which was in the nature of adoption; and by such custom the children were taken to be legitimate.

Panis conjuratus. Ordeal bread. A kind of superstitious trial among the Saxons, by taking a piece of barley bread and eating it with solemn oaths and execrations that it might prove poison if what they asserted or denied was not true.

Paraphernalia. All those things which a woman brings her husband, besides her portion.

Paratus sum verificare. I am ready to verify.

Parcella terra. A parcel of land. Used in ancient charters.

Parco fracto. A writ against him who violently broke a pound and took out beasts from thence, which were lawfully impounded.

Parcus. An inclosure; a close; a pound.

Parens est nomen generale ad omne genus cognationis. Parent is a name general for every kind of relationship.

Parens Patriæ. The father or guardian of the country. Applied to the king.

Parentela. De parentela se tollere. A renunciation of one's kindred and family. This was, according to ancient custom, done in open Court. After such abjuration the person was incapable of inheriting anything from any of his relations, &c.

Pares. Equals; freeholders. A person's peers or equals.

Pares curiæ. Equals or freeholders of the Court; the peers or equals of the defendant.

Pares regni. The peers of the realm.

Par excellence. (Fr.) Especially; by way of eminence.

Par exemple. (Fr.) For instance.

Paria copulantur paribus. Like things unite with like. Birds of a feather flock together.

Paribus sententiis reus absolvitur. Where the opinions are equal, the defendant is acquitted.

Pari jure. By equal right.

Pari materia. In a like matter or argument.

Par in parem imperium non habet. An equal has no power over an equal.

Pari passu. In a like pace; in an equal portion. By the same gradation. On an equal footing. A phrase used especially of the creditors of an insolvent, who are entitled to payment of their debts in shares proportioned to their respective claims.

Pari ratione. For the like reason. By the like mode of reasoning.

Parium eadem est ratio, idem jus. Of things equal, the reason is the same, and the same is the law.

Parol. By word or speech; oral.

Par pro pari. Equal for equal; value for value; applied to an exchange.

Pars bonorum. Portion of the goods.

Pars hæreditatis. Portion of the succession.

Pars (partem) pro toto. A part for the whole. The name of a part used to represent the whole; as the roof for the house; ten spears for ten armed men.

Pars rationabilis. A reasonable part. See *De rationabili parte bonorum.*

Partem aliquam recte intelligere nemo potest, antequam totum, interum atque iterum, perlegerit. No one can rightly understand any part until he has read the whole again and again.

Partes finis nihil habuerunt. The parties to the fine had nothing. An exception taken against a fine levied on the ground that the parties thereto had no freehold estate in the lands which they professed to affect thereby.

Partibus. (Sc. L.) A note written in the margin of a summons, &c., giving the name and address of the plaintiff and defendant, and of the former's counsel and solicitor.

Particeps criminis. A partner in crime. See *Accessorius.*

Particeps criminis quasi accedens ad culpam. A partner in crime is, as it were, assenting to the offence.

Particeps fraudis. A partner in fraud.

Participes. Co-parceners; partners.

Participes plures sunt quasi unum corpus, in eo quod unum jus habent, et oportet quod corpus sit integrum, et quod in nullâ parte sit defectus. Many partners are like one body, inasmuch as they have one right, and it is necessary that the body be perfect, and that there be defect in no part.

Particula. A small portion; a particle; a small piece of land.

Partitione facienda. An abolished writ for making partition which lay, at the instance of some of the co-parceners, against those who refused to join in the partition.

Partus sequitur ventrem. The offspring follows the dam; the progeny belongs to the owner of the dam; the issue follows the mother. This is a maxim of the Roman Law and applied to the status of the issue of a female slave by a free-father in countries where slavery was recognized. It also expresses the rule respecting property in the young of animals. See *Si equam meam...*

Parum differunt quæ re concordant. Things which agree in substance differ but little.

Parum est latum esse sententiam nisi mandetur executioni. It is not enough that sentence be given unless it be carried into execution. See *Executio est fructus...*

Parum proffit scire quid fieri debet, si non cognoscas quomodo sit facturum. It avails little to know what ought to be done, if you do not know how it is to be done.

Parva proditio. Petit treason.

Parvum servitium regis. A king's small service, or petit serjeanty. A service anciently due to the Crown for lands held of it.

Passagio. An ancient writ addressed to the keepers of the ports to permit a man who had the king's license to pass over sea.

Passim. Everywhere; on every side; all through.

Pater. A father; an elder; a senator. The ascending line of lineal ancestry runs thus:—Pater, Avus, Proavus, Abavus, Atavus, Tritavus, and the seventh generation in the ascending scale will be Tritavi-pater, and that above it, Proavi-atavus.

Pater aut mater defuncti, filio non filia hereditatem relinquunt. Qui defunctus non filios sed filias reliquerit, ad eas omnis hereditas pertineat. On the demise of the father and mother, the estate descends to the son, not to the daughter. If a deceased person has not left sons, but daughters, then the whole estate pertains to them.

Pater est quem nuptiæ demonstrant. (Rom. L.) He is the father whom the marriage declares so. In the case of persons born in wedlock, all the legal rights and privileges of a child attach, however, conspicuous and noto-

rious may be the origin of the person, until his status has been legally destroyed. The maxim does not exclude proof of non-access where the husband is proved to have been absent from (and the wife present within) the four seas, during the entire period of gestation (*Morris v. Davis*, 5 Cl & F. 163). See the Ind. Evi. Act I of 1872, s. 112. See *Hæres legitimus est...*

Pater et mater et puer sunt una caro. The father, mother, and son are one flesh.

Pater-familias. (Rom. L.) The master of a house or family; a householder; one who is *sui juris* and the head of a family.

Pater-familias ob alterius culpam tenetur, sive servi, sive liberi. The master of a house is held responsible for the offence of another, whether it be his servant or his child.

Patrem sequitur sua proles. His own issue follows the father.

Patria. The country; the man or jury of a neighbourhood. *Inquiratur per patriam*, inquire by the country, i. e., a jury of the neighbourhood.

Patria potestas. (Rom. L.) Paternal power. Under such power the father acquired all the property of his children and had originally the power of life and death over their persons. But under the later Roman Law, these powers were relaxed and children were allowed to have their private property. See *Peculium*.

Patria potestas in pietate debet, non atrocitate consistere. The authority of a parent should consist in affection, not in barbarity. The exposure or abandonment of a child under twelve years by a parent, or other person having care of it, is made punishable under s. 317 of the Ind. P. C. XLV of 1860.

Patrimonium. See *Matrimonium*.

Patronatus. Patronage.

Patronum faciunt dos, edificatio, fundus. Endowment, building and land make a patron. The patron has consequently the privilege of presenting to the ecclesiastical benefice.

Patruus. An uncle by the father's side.

Pax Dei et ecclesiæ. Peace of God and the church. Anciently used for that cessation which the king's subjects had from trouble and suit of law between the terms and on Sundays and holidays.

Pax regis. The king's peace. That peace and security both for life and goods, which the king promiseth to all his subjects and others taken into his protection. And where an outlawry is reversed, a person is restored to the king's peace, and this is termed *ad pacem redire*. *Pax regine*, peace of the Queen.

Peccata contra naturam sunt gravissima. Crimes against nature are the most heinous. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with

transportation for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine (*Ind. P. C. XLV* of 1860, s. 377).

Peccata suos teneant auctores nec ulterius progrediatur metus, quam reperiatur delictum. Let offences bind only the transgressors, nor let the dread proceed farther than the offence be discovered.

Pecatum peccato addit qui culpæ quam facit patrocinia defensionis adjungit. He adds fault to fault who sets up a defence of a wrong committed by him.

Peculatus. The embezzling of public money.

Peculium. (*Rom. L.*) Stock; estate; private property. The savings of a son or slave accumulated with the father or master's consent. See *Patria potestas*.

Peculium castrense. Property acquired in war; military estate.

Pecunia. Money. Cattle and other goods as well as money.

Pecuniâ non numeratâ. Money was never advanced. A defence in an action on a bond, where the obligee, although in possession of the bond, had never in fact advanced money to the obligor.

Pecunia numeratâ. Ready money.

Pede poena claudo. Punishment follows crime with a slow foot.

Pedis abscissio. Cutting off the foot. A punishment on criminals, anciently inflicted, instead of death, as appears by the laws of William the Conqueror.

Pedis possessio. An actual possession or foot-hold.

Peine. Penance; penalty.

Peine forte et dure. Hard and severe penance or penalty. This was the punishment for standing mute on an indictment for felony. Before it was pronounced the prisoner had a threefold admonition (*trina admonitio*) and the sentence was distinctly read to him. The sentence was that he be remanded to the prison and put into a low dark chamber and laid naked on his back on the bare floor; that there be placed on his body as great a weight of iron as he could bear, and more; that he have no sustenance, save only on the first day three morsels of the worst bread, and on the second day three draughts of standing water that should be nearest to the prison door; and in this situation this should be alternately his daily diet until he died, or till he answered. Now abolished.

Pellis exitum. *Pellis receptorum.* See *Clericus pellis*.

Pendente lite. Pending the suit or cause. During litigation.

Pendente lite nihil innovetur. During a litigation nothing new should be introduced. During a litigation no change in the position of things, or of parties, can be made.

During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor General in Council, of a contentious suit or proceeding in which any right to immovable property is *directly* and *specifically* in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose (*Trans. of Pro. Act IV* of 1882, s. 52).

The doctrine of *lis pendens* is in force in British India. That doctrine rests, as stated by Turner, C. J., in *Bellamy v. Sabine* (1 De G. & Jo. 566), not upon the principle of constructive notice, but upon the fact that it would be plainly impossible that any action or suit could be brought to a successful termination if alienations *pendente lite* were permitted to prevail (*Lakshmandas Sarupchand v. Dasrat*, 6 Bom. 168, F. B.; *Balaji v. Khushalji*, 11 Bom. H. C., A. C., 24, following *Kasim v. Unnodaprasad*, 1 Hyde 160, and *Manual v. Sanapalli*, 7 Mad. H. C. R. 104; *Ravji Narayan v. Krishnaji*, 11 Bom. H. C., A. C., 189).

The reason for refusing recognition to alienations *pendente lite* made by a party to a suit is as fully applicable to the case of a registered as of an unregistered conveyance (*Lakshmandas v. Dasrat*, *supra*; *Bhagwan Das v. Nathu Singh*, 6 All. 444; *Gulabchand v. Dhondi*, 11 Bom. H. C., A. C., 64; *Raj Kishen v. Radha Madhub Holdar*, 21 W. R. 349).

A sale pending execution proceedings is a sale *pendente lite*, and void as against the plaintiff (*Shivji Ram v. Waman*, 22 Bom. 939).

The doctrine of *lis pendens* does not apply when the decree in the suit is made by consent (*Vythnadayyan v. Subramanya*, 12 Mad. 439; *Kishori Mohun Roy v. Mahomed Mujaffar*, 18 Cal. 188).

A purchaser of mortgaged property, pending a suit on the mortgage, takes subject to such decree as may be made in that suit, and subject also to the execution of the decree. A purchaser at a sale in execution of such decree will therefore acquire better title than the purchaser *pendente lite* (*Ganeshbhat v. Chinnajirav*, F. J., 1874, p. 189).

Where a decree awards a plaintiff possession of mortgaged property until the mortgage is paid off, a subsequent purchaser of the property cannot resist the plaintiff's right to possession, the property being pro-

tected from alienation from the date of the institution of the suit (*Tookaram v. Gopala*, P. J., No. 50 of 1872).

A decree under s. 88 of the Transfer of Property Act, 1882, being only a decree *nisi* and not a final decree, the suit in which such a decree is passed does not terminate until an order absolute is made under s. 89. Where, therefore, such a decree is assigned before any order absolute is made, the assignee takes subject to all the liabilities resulting from the application of the doctrine of *lis pendens* (*Chunni Lal v. Abdul Ali Khan*, 23 All. 331).

Where an attachment of any property has been made by actual seizure or by written order duly intimated and made known, any private alienation of the property attached whether by sale, gift, mortgage, or otherwise, and any payment of the debt or dividend, or a delivery of the share, to the judgment debtor during the continuance of the attachment shall be void against all claims enforceable under the attachment (*Civ. Pro. Code XIV of 1882*, s. 276; *Anandlal Das v. Radhamohan*, 2 B. L. R., F. B., 49). Section 492 of the Code provides for the granting of a temporary injunction pending the suit, when the property in dispute is in danger of being wasted, damaged or alienated by any party to the suit, or wrongly sold in execution of a decree.

The rule *pendente lite nihil innovetur* does not prevent a person who has purchased before the institution of the suit, from improving his title already acquired, so far as he can do so without the assistance of the defendant to the suit, *e. g.*, by registering *pendente lite* a purchase effected before the institution of the suit. The principle of the rule is that the law does not allowed litigant parties to give to others, pending the litigation, rights to the property in dispute, so as to prejudice the opposite party (*Bapuji v. Ichkaram*, P. J., 1877, p. 81).

A suit does not become contentious until the summons is served on the defendant (*Radasyam v. Sibul Panda*, 15 Cal. 647), but as soon as the filing of the plaint is brought to the notice of the defendant, the proceeding becomes contentious, and any alienation subsequent to that is subject to the doctrine of *lis pendens* (*Abboy v. Annamalai*, 12 Mad. 180).

As to the time when a contentious suit ends, see *Gobind Chunder v. Guru Churn* (15 Cal. 94) in which it was held that when the decree in a suit was open to appeal, the decree in the suit was that passed by the appellate Court, the proceedings in the appeal Court being merely a continuation of those in the suit. Followed in *Dinonath Ghose v. Shama Bibi*, 28 Cal. 23. See also *Sadasivayyar v. Muttu Sabapathi*, (5 Mad. 106) and *Gokool Chunder v. The Administrator General of Bengal* (5 Cal. 726).

Pendente placito. While the plea is pending.

Pendentes. (*Rom. L.*) Fruits hanging; un-gathered fruits.

Penes auctorem. In the possession of the author.

Penes me. In my power or possession.

Pensio. Payment; a tax; rent; interest of money.

Per. Post. To come in the *per* is to claim by or through the person last entitled to an estate as the heirs or assigns of the grantee; to come in the *post* is to claim by a paramount and prior title, as the lord by escheat.

Per alluvionem. By alluvion

Perambulatione facienda. A writ which issued where two or more lordships adjoined each other, and some encroachments were supposed to have been made. On the parties consenting to have their bounds severally determined, the writ directed the sheriff to make perambulation and to set down their certain limits.

Per annulum et baculum. By a ring and a staff. The method of granting an investiture, which was by the prince's delivering to the prelate a ring and pastoral staff.

Per assensum partium. With the consent of the parties.

Per attornatum. By attorney.

Per aversionem. By the bulk; *e. g.*, sale *per aversionem*.

Per breve de privato sigillo. By writ of privy seal.

Per capita. By the heads or polls; by number of individuals; through one's own right. See *Capita*. Opposed to *per stirpes* (by the number of families).

Per cause de voisinage. By reason of neighbourhood.

Per centum, per annum. By the hundred, by the year.

Per clericum et populum. By the clergy and the people.

Per contra. On the other side.

Per copiam rotuli curie. A tenure (*tenura*) of lands for which the tenant hath nothing to show but the copy of the rolls made by the steward of the lord's court. A copyhold tenure.

Per corruptam accommodationem. By a corrupt accommodation.

Per cui et post. Old writs of entry, now abolished.

Per curiam. By the court. An expression showing that a decision was arrived at by the court, consisting of one or more judges as the case may be. The word *per*, preceding the name of a judge signifies that a dictum which follows is quoted on the authority of the judge.

Per curiam non allocatur. It is not allowed by the court.

Per cursum aquæ. By the course of water.

Per descent. Assets *per descent*, is where a person is bound in an obligation, and dies seised of land which descends to the heir; the land shall be assets and the heir shall be charged as far as the land descended to him will extend. Assets *inter maines*, is when a man indebted makes executors, and leaves them sufficient to pay his debts and legacies, or where some commodity or profit arises to them in right of the testator which are called *assets in their hands*.

Per diem. By the day; per day.

Perdonatio utlagariæ. A pardon for an outlaw who, for contempt in not yielding obedience to the process of the king's court, is outlawed and afterwards of his own accord surrenders.

Per duress. By threat or compulsion.

Per eundem. By the same. By or from the mouth of the same judge.

Per eundem, in eadem. By the same judge in the same cause.

Per fas. By that which is allowed or permitted; lawfully; in a lawful manner, as opposed to *per nefas*.

Per fas et nefas. Through right and wrong.

Perfectum est cui nihil deest secundum suam perfectionis vel naturæ modum. That is perfect which wants nothing according to the measure of its perfection or nature.

Per formam doni. By or according to the form of the gift.

Per fraudem. By fraud.

Per grande servitium. By signal service, *i. e.*, carrying the king's banner or lance, or being champion, butler or the like at his coronation; a sort of tenure.

Per guardianum (guardionem). By guardian.

Periculosum est res novas inusitatas inducere. It is dangerous to introduce new and unusual things. See *Omnis innovatio...*

Periculum rei venditæ, nondum traditæ, est emptoris. The risk of a thing sold, and not yet delivered, is the purchaser's. See the Ind. Con. Act IX of 1872, s. 86, and illustrations.

Per incuriam. Through want of care.

Perinde valere. To be available equally with. A dispensation granted to a clerk, who, being under some disability, had nevertheless been admitted to a benefice or other ecclesiastical function, to retain his promotion as if the disability had not existed.

Per industriam. By industry; designedly. A qualified property in animals *feræ naturæ* may be acquired *per industriam, i. e.*, by a man's reclaiming and making them tame by art, industry and education; or by so confining them within his own immediate power that they cannot escape and use their natural liberty.

Per infortuniam. By ill chance; by misfortune; by misadventure. Applied to an excusable homicide, where a man doing a lawful act, without any intention of hurt, unfortunately kills another, as where a per-

son is at work with a hatchet, and the head of it flies off and kills a by-stander. See the Ind. P. O. XLV of 1860, s. 80.

Per ipsum regem. By the king himself.

Peritus in lege. Well skilled in law.

Perjuriæ pena divina, exitium; humana, dedecus. The divine punishment for perjury is destruction; the human punishment is disgrace.

Perjuri sunt qui servatis verbis juramenti decipiunt aures eorum qui accipiunt. They are perjured, who, preserving the words of an oath, deceive the ears of those who receive it.

Per lapsum temporis. By lapse of time.

Per laudamentum sive judicium parium suorum. By the award or judgment of his equals.

Per legem Angliæ. See *Tenens per...*

Per legem terræ. By the law of the land.

Per malitiam. Through malice. Without just cause or excuse.

Per mare, per terras. By sea and land.

Per mensem. By the month.

Per minas. By threats.

Permutatio. (Rom. L.) Exchange or barter.

Permutatione. A writ to an ordinary, commanding him to admit a clerk to a benefice upon exchange made with another.

Per my (mie) et per tout. By the half and the whole. In part and entirely. An expression applied to occupation in joint tenancy, indicating that the joint tenants have each of them the entire possession as well of every parcel as of the whole.

Per nefas. Unlawfully; in a fraudulent manner; as opposed to *per fas*.

Per pais. By the country, *i. e.*, by the jury.

Perpetua lex est, nullam legem humanam ac positivam perpetuam esse; et clausula quæ abrogationem excludit, ab initio non valet. It is an everlasting law, that no human and positive law shall be perpetual; and a clause that excludes abrogation is invalid from its commencement. See *Leges posteriores...*

Per plures. By a majority.

Per procurationem. By procuration. By agency; meaning that a receipt, note, or other writing is signed by one man as the agent of another. Abbrev. *P. P.* or *Per proc.*

Per quæ servitia. By which services. A real action by the grantee of a fine of a manor or seigniority to compel the tenants to at-torn to him, and to accept the party to whom the conveyance was made, as their landlord, and to render to him the same services they had hitherto performed to their prior landlord.

Perquisitio. A purchase; a self-acquisition.

Perquisitor. An acquirer; a searcher.

Per quod. By which; whereby. Words made use of by a plaintiff in his declaration in the averring of particular damage to have

happened, without which his action would not have been maintainable. As in a declaration in trespass, for an injury to a wife or servant, or slander, the plaintiff states *per quod*, whereby he lost *consortium* (company) of the one, or *servitium* (service) of the other. The plaintiff is thus said to lay his action with a *per quod*.

Per quod actio accrevit. Whereby an action hath accrued.

Per quod consortium amisit. Whereby he lost her society. An allegation of special damage introduced into the declaration by a husband for injury to his wife, as for beating, false imprisonment, &c., whereby he is deprived of her company and assistance.

Per quod proficium communie sue habere non potuit. By which he could not have the benefit of his common.

Per quod proficium summ ibidem amisit. Whereby he lost his profits in it.

Per quod servitium amisit. By which he lost his or her service. An allegation of loss of service by plaintiff against a defendant, who has seduced the daughter or a female servant of the plaintiff; the loss of service being the special damage on which the action is founded.

Per rationabili pretium et extentum. By or at a reasonable value and extent.

Per rationes pervenitur ad legitimam rationem. By reasoning we come to true reason.

Per saltum. By the leap; directly.

Per sceptrum. By the scepter.

Per se. By itself. Alone. Where a person objects to an act *per se*, he means that he would object to it under any circumstances whatever; as opposed to the case where a person, by reason of special circumstances, objects to an act to which he would not ordinarily make objection.

Per se aut per alium. By himself or by another.

Per servitium militare. By knight's service.

Persona conjuncta equiparatur interesse proprio. A conjoint person is equivalent to a private interest.

The interest of a personal connection is sometimes regarded in law as that of the individual himself. The maxim is in some cases applicable in determining the liability of an infant on contracts for what cannot strictly be considered as *necessaries* within the ordinary meaning of that term. Thus if a man under age contract for the nursing of his lawful child this contract is good and shall not be avoided by infancy no more than if he had contracted for his own ailments and erudition. The like legal principle has been extended so as to render an infant widow liable upon her contract for the funeral of her husband who had left no property to be administered (*Chapple v. Cooper*, 13 M. & W. 259). See S. 68 of the Ind. Con. Act IX of 1872.

But the maxim does not apply so as to render a parent liable on the contract of the infant child, even where such contract

is for *necessaries* unless there be some evidence that the parent has either sanctioned or ratified the contract. The mere moral obligation on the father to maintain his child affords no inference of a legal promise to pay his debts. The mere moral obligation to do so cannot impose upon him any legal liability (*Mortimer v. Wright*, 6. M. & W. 487; *Shelton v. Springett*, 11 C. B. 452), and Courts are to decide according to the *legal obligations* of the parties (*Turner v. Mason*, 14 M. & W. 117).

Persona designata. A person described. The description may be either by his proper name or by his official designation.

Persona ecclesiae. A parson or rector of a church.

Persona impersonata. A rector; a parson impersonated. When a clerk is presented, instituted and inducted into a rectory, he is then, and not before, in full and complete possession, and is called in law *persona impersonata*, or parson impersonatee.

Personne ne peut s'acquiescer un droit ni se rendre créancier d'un autre per des actes qu'il fait à sa volonté. No one can acquire a right or make himself the creditor of another by acts which depend solely on his own will.

Per spatium octo annorum. For a space of eight years.

Perspiciua vera non sunt probanda. Plain truths require no proof. See *Lex non requirit...*

Per stirpes. By stock; by right of ancestry. See *Capita*.

Per subsequens matrimonium. By subsequent marriage, e. g., the legitimization of a bastard by the subsequent marriage of his parents which could be done according to the Civil and Common Law, and the systems founded thereon, including the law of Scotland.

Per testes. By witness. The proof of a will *per testes*, means by witnesses in open Court. A trial *per testes* is a trial before a judge without the intervention of a jury, in which the judge is left to form in his own breast the sentence upon the credit of the witnesses examined.

Pertinentia. Appurtenances or things appurtenant.

Per tot. By so many.

Per totam curiam. By the whole Court. By the unanimous judgment of the whole Court. See *Per curiam*.

Per totum triennium. For three whole years.

Per tout, et non per my. In whole and in not in part. Where an estate is devised to a man and his wife during coverture, they are said to be tenants by entireties, that is, each is said to be seised of the *whole estate*, and neither of a part.

Per varios actus legem experientia facit. By various acts experience framed the law.

Per verba de futuro subsequente copula. By words in the future time or tense after cohabitation. A sort of irregular marriage

by promise, followed by cohabitation, to marry at a future time. This differs from a marriage *per verba de presenti* in this, that it does not amount to a lawful marriage without having been declared so to be by special legal process, whereas the marriage *per verba de presenti*, if proved, amounts to a legal marriage without any such process.

Per verba de presenti. By words in the present time or tense. A sort of irregular marriage in which nothing more is necessary than a present interchange of consent, in whatever manner given, to become thenceforth husband and wife. Consummation is not required, and the consent may be exchanged most secretly. See *Per verba de futuro*...

Per vinum et lascivium delapsis capitalis pœna remittitur. A capital punishment is remitted to those overcome by drunkenness or lust.

Per visum ecclesie. Under the inspection of the church.

Per visum recognitorum. Under the inspection of the jury.

Pessimi exempli. Of the worst example.

Petit cape. Small cape; a writ issued in a plea of lands or tenements against a tenant to answer for a default. See *Cape*.

Petitio. Petition; count; declaration.

Petitio ad misericordiam. An appeal to mercy or compassion.

Petitio consilii. Craving leave to impart.

Petition de droit. Petition of right. One of the common law methods of obtaining possession or restitution from the crown of real or personal property, or compensation in damages for breach of contract.

Petitio principii. A begging of the question. The taking of a thing for true or for granted and drawing conclusions from it as such. The supposition of what is not granted.

Petit judicium. He seeks judgment.

Petitor. An applicant; a candidate for an office; the plaintiff in a civil action. See *Accusator*.

Pia fraus. A friendly stratagem.

Pignus. A pledge of any thing for money lent, the possession passing to the creditor. See *Hypotheca*.

Pios usus. Pious uses.

Pirata est hostis humani generis. A pirate is an enemy of the human race.

Pisces suos. His own fish.

Placita. Pleas, pleadings, or debates and trials at law. Public assemblies of all degrees of men where the sovereign presided who usually consulted upon the great affairs of the kingdom.

Placita dilatoria (or temporalis). Dilatory pleas or pleas in abatement or suspension, which are not connected with the merits of the case.

Placita juris. Pleas or forms of law. See *Receditur a placitis*...

Placita peremptoria (or perpetua). Peremptory pleas or pleas in bar, which are based upon the writs and go to the root of the case.

Placitum. Plea; decree; determination. Point decided in a judgment. Abbrev. *Pl*.

Placitum de namio vetito. See *Namium vetitum*.

Placitum nominatum. The day appointed for a criminal to appear and plead, and make his defence. *Placitum fractum*, when the day is past.

Plagiarii. Men-stealers.

Plegii de proseguendo. Pledges to prosecute with effect an action of replevin.

Plegii de retorno habendo. Pledges given by the party replevying to return the goods distrained, in case the action of replevin were decided against him.

Plegiis acquietandis. A writ that anciently lay for a surety against him for whom he was surety, if he paid not the money at the day.

Plagium. Plagii crimen. (*Rom. L.*) Man-stealing; the stealing and spiriting away men, women or children.

Plena forisfactura. A full forfeiture, A forfeiture of life and member, and of all that a man has. Also called *plena vita*.

Plena probatio. (*Rom. L.*) Full proof. Testimony by two witnesses.

Plene administravit. He has fully administered. A plea by an executor or administrator where he has administered the deceased's estate faithfully and justly before the action brought against him.

Plene administravit præter. He has fully administered, except (certain assets still in his hands).

Plene computavit. He has fully accounted.

Pleno jure. With full authority.

Plenum dominium. Full and complete ownership. A title combining the right and the corporal possession of property.

Plures cohæredes sunt quasi unum corpus propter unitatem juris quod habent. Several co-heirs are, as it were, one body, by reason of the unity of right which they possess.

Plures participes sunt quasi unum corpus, in eo quod unum jus habent. Several parceners are as one only, in that they have one right.

Pluries. As often. A writ that issues in the third instance, after two former writs have been disregarded. The original writ is the *capias*; then follows an *alias*; which failing, the *pluries* issues. It ran thus—"You are commanded as often you have been commanded" &c.

Pluris est oculatus testis unus quam auriti decem. On eye-witness is of more weight

than ten who give evidence merely from hearsay. See the Ind. Evi. Act I of 1872, s. 60.

Plus est enim statim aliquid dare, minus est post tempus dare. The obligation is greater, if one give a thing at once, but less if it be given only after a time.

Plus exempla quam peccata nocent. Examples hurt more than crimes.

Plus peccat auctor quam actor. The causer offends more than the performer.

Plus-petitio, Pluris-petitio. (*Rom. & Sc. L.*) When a plaintiff includes in his claim more than is due. A plea denoting the offence of claiming more than was just in one's pleadings, either in amount, in place (*i. e.*, delivery at a place other than contracted for), in time (*i. e.*, claiming money before it is actually due), or in quality.

Plus valet quod agitur quam quod simulatè concipitur. What is done avails more than what is pretended to be done.

Plus valet unus oculatus testis quam auriti decem. One eye-witness is better than ten ear-witnesses.

Plus valet vulgaris consuetudo quam concessio. Common custom is of greater force than a grant. See *Optimus interpres*...

Plus vident oculi quam oculus. Eyes see more than a single eye. This probably means that many witnesses are better than a single witness. No particular number of witnesses, however, is in any case required for the proof of any fact (*Ind. Evi. Act I of 1872, s. 184*). See *Testimonia ponderanda*...

Pochain ami. Next friend or guardian.

Pœna ad mensuram delicti statuenda est. Punishment is to be measured by the extent of the offence. See *Culpæ pena*...

Pœna corporalis. Corporal punishment; imprisonment.

Pœnæ potius molliendæ quam exasperandæ sunt. Punishments should rather be softened than aggravated.

Pœnæ sint restringendæ. Punishments should be restrained.

Pœnâ, ex delicto defuncti, hæres teneri non debet. The heir ought not to be bound in a penalty for the crime committed by the defunct.

Pœna exilii. Punishment of exile; transportation.

Pœna pecuniaria. Pecuniary punishment; fine.

Pollicitatio. (*Rom. L.*) An offer of a tentative character, falling short of a promise. A promise before it is accepted.

Pomæria. Precincts.

Ponatur. That it be put or set, That it be reduced to a certainty.

Ponderantur testes, non numerantur. Witnesses are to be weighed, not numbered. See *Testimonia ponderanda*...

Pondus regis. The king's weight. The standard weight anciently appointed by the king.

Pone. Put. A writ whereby a cause depending in the county or other inferior court was removed into the Common Pleas, and sometimes into the King's Bench.

Ponendis in assisis. An old writ whereby a sheriff was directed to impanel a jury for an assize or real action.

Ponendum in ballium. A writ commanding that a prisoner be bailed in cases bailable.

Pone per vadium. Put by pledges. An obsolete writ to the sheriff commanding him to take security from defendant for his appearance at a day assigned. It generally issued when defendant failed to appear and answer the plaintiff's suit. It was so called from the words of the writ, *pone per vadium et salvos plegios* 'put by gage and safe pledges, A. B., the defendant.'

Ponere ad rationem. To cite one to appear in judgment.

Pontibus reparandis. An old writ directing the sheriff to charge a man with the repair of a bridge.

Populus vult decipit, et decepiatur. Let the people be deceived, as they wish it. See *Qui vult*....

Portus præfectus. Portgreve. A magistrate in certain sea-coast towns.

Positio. A claim; argument.

Positivus juris. A positive or arbitrary law. For example the Stamp Law, which imports nothing of principle or of reason, but depends entirely upon the language of the Legislature (*Morley v. Hall*, 2 Dowl. 494).

Posito uno oppositorum negatur alterum. One of two opposite positions being affirmed, the other is denied.

Posse. Possibility. See *In posse*.

Posse comitatus. The power of the county; the armed force of the county; an assemblage of persons. The people of the county whom the sheriff may command to attend him for keeping of the peace and pursuing felons; also for defending the county against the king's enemies.

Possessio civilis. (*Rom. L.*) A legal possession, *i. e.*, a possession accompanied with the intention to be, or to thereby become, owner; as distinguished from *possessio naturalis* otherwise called *nuda detentio* (bare detention) which was a possession without any such intention.

Possessio est quasi pedis positio. Possession is, as it were, the position of the foot.

It is said that possession is nine-tenths of the law. But this adage is not to be taken

to be true to the full extent, so as to mean that the person in possession can only be ousted by one whose title is nine times better than his, but it places in a strong light the legal truth that every claimant must succeed by the strength of his own title and not by the weakness of his antagonist's. For instance, if the claimant be able to show a descent from the grantor of the estate, perfect except in one link of the chain, and the man in possession be a perfect stranger, the latter shall keep the estate; and so, also, if the claimant be a natural son of the last owner, and adopted by him, and declared by him to be designed as his heir, yet if he die without making a will in his favour, the stranger in possession has a better title, adoption not conferring, under English Law, any right of inheritance.

If a landowner allows a relative, dependant, or friend, to occupy rent free a cottage and land upon his estate, he does not thereby necessarily part with the possession of it, but may continue to exercise acts of ownership over the land so occupied (*Mayhew v. Sattle*, 4 E. & B. 347). And generally, as against third persons, the possession of the tenant is the possession of the owner (*Bushby v. Dixon*, 3 E. & C. 298). So, if he suffers his servant or workman employed upon his estate, to live in a cottage thereon rent free, the possession of the servant is the possession of the master, and no title can be gained by such occupation, however long it may be continued (*Turner v. Doe*, 9 M. & W. 645; *White v. Bailey*, 7 Jur. N. S. 948).

The general rule is that possession constitutes a sufficient title against every person not having a better title. He that hath possession of lands, though it be by *disseisin* hath a right against all men but against him that hath right, for, till some act be done by the rightful owner to divest this possession and assert his title, such actual possession is *prima facie* evidence of a legal title in the possessor, so that, speaking generally, the burden of proof of title is thrown upon any one who claims to oust him (*Ind. Evi. Act I of 1872 s. 11'*); this possessory title, moreover, may, by length of time and negligence of him who had the right, by degrees ripen into a perfect and indefeasible title. See *Longa possessio...*

Possession itself constitutes a title against any person failing to prove a better (*Savalgiapa Virbasapa v. Basvanapa Basapa*, 10 Bom. H. C., A. C., 899). The title of possession must prevail until a good title is shown to the contrary (*Rajah Pedda Venkatapa Naidoo v. Arovala Roodrapa Naidoo*, 2 Moo. I. A. 504; 1 Suth. P. C. 112). When plaintiff's evidence fails to show title in him but does not show title in another, the plaintiff may recover his possession against a defendant wrong-doer (*Doe dem Kullammal v. Kuppu Pillai*, 1 Mad. H. C. R. 85).

A possession obtained peaceably and without ousting any one is of such a character as to attract the presumption described in s. 110 of the Evidence Act and is good against the whole world, except the person who can show a better title to the land (*Hanmantrao v. The Secretary of State for India*, 25 Bom. 287; 3 Bom. L. R. 1111, following *Gangaram v. Secretary of State*, 20 Bom. 798).

The maxim of the Roman Law on this subject is *adversus extraneos vitiosa possessio prodesset solet*, a defective possession is valid as against a stranger. A possession commencing by trespass can be defended against a stranger not only by the first wrongful occupier but by those claiming through him; in fact it is a good root of title as against every one except the person really entitled (*Asher v. Whitlock*, L. R. 1 Q. B. 1).

A trespasser cannot by the very act of trespass, immediately, without any acquiescence on the part of the owner, become possessed of the land, or house, upon which he has trespassed, and which he tortiously holds. But if he is allowed to continue on the land or house, and the owner of the same sleeps upon his rights and makes no effort to remove him, he will gain a possession, wrongful though it be, and cannot be forcibly ejected.

If any person is dispossessed, without his consent, of immoveable property otherwise than in due course of law, he or any person claiming through him may by suit, instituted within six months from the date of dispossession, recover possession thereof notwithstanding any other title that may be set up in such suit. But this does not prevent any person from suing to establish his title to such property and to recover possession thereof (*Specific Rel. Act I of 1877, s. 9; Ind. Lim. Act XV of 1877, Sch. II, Art. 3*).

When a Magistrate is satisfied that a dispute likely to induce a breach of the peace exists concerning any land, house, water, fishery, or crop, he shall enquire, without reference to the merits of the claims of any party to a right of possession, and decide which party is in possession of the subject of dispute, and issue an order declaring that party to be entitled to retain possession until ousted by due course of law, and forbidding all disturbance until such eviction (*Crim. Pro. Code V of 1898, s. 145*).

In connection with this subject see *In aequali jure... In pari delicto...*

Possessio fratris de feodo simplici facit sororem esse hæredem. The possession of the brother of an estate in fee-simple makes the sister (of the whole blood) an heiress (in preference to a brother of the half blood).

Possessio naturalis. See *Possessio civilis*.

Possibilitas. An act wilfully done as distinguished from *impossibilitas*, an act done against our will.

Possibilitas post dissolutionem executionis nunquam reviviscatur. Possibility is never revived after the dissolution of execution.

Post. After. When occurring in a report or text-book, it refers the reader to a subsequent part of the book. Opposed to *ante*. See *Per*.

Post Conquestum. After the Conquest.

Post diem. After the day. The phrase was used to denote the return of a writ after the day assigned.

Post disseisin. A writ that lay for him who, having recovered lands or tenements by force of a *novel disseisin*, was again disseised by the former disseisor. Now obsolete.

Postea. Afterwards; hereafter. The record of that which is done subsequently to the joining issue and awarding the trial.

Postea scilicet. Afterwards to wit.

Posteriora præsuntur a prioribus. From prior acts the posterior are presumed. See *Præsuntur posteriora*...

Posteriori derogant prioribus. Things subsequent supersede things prior.

Post fine. The after fine. See *Licentia concordandi*...

Postliminium. A recovery; a return; a reprisal; a law to recover what is lost in war and afterwards recovered. The restoration of persons or things captured by an enemy to their former position on being re-captured.

Post litem motam. After the dispute arose. After a suit has been in contemplation. See *Ante litem*...

Post mortem. After death; e. g., a *post mortem* examination of a corpse by a surgeon, in order to discover the cause of death.

Post natus. Born afterwards. The second son, or one born afterwards. Plur. *Post nati*.

Post nati also meant persons born in Scotland after the descent of the crown of England to king James, who were held not to be aliens in England. But those born before the descent (*ante-nati*) were considered aliens in respect of the time of their birth.

✓ *Post obit.* After death and interment. A *post obit* bond is conditioned to be void on the payment by the obligor of a sum of money upon the death of another person, such person being usually one on whose death the obligor expects to receive some property.

Postremo-geniture. The custom of Borough English. A custom whereby the youngest son inherits all the realty which belonged to his father.

Post terminum. After the term. The return of a writ not only after the day assigned for the return thereof, but after the term also. Also the fee levied on such return.

Postulatio. A complaint; an application for redress.

Post ultimam continuationem. After the last continuance.

Potentia est duplex, remota et propinqua; et potentia remotissima et vana est qua nunquam venit in actum. Possibility is of two kinds, remote and near; and that possibility is most remote and vain which never comes into action.

Potentia inutilis frustra est. Unless power is vain. See *Executio est fructus*...

Potentia propinqua. A probable possibility. A common or nearer possibility which may reasonably be expected to happen.

Potentia remota. A remote possibility; a double possibility; a possibility upon a possibility; as where a remainder in land is limited to a son John or Richard of a man that hath no son of that name, the supposed "double" possibility being, 1st, that the man would have a son; 2nd, that the son would be called John or Richard, as the case might be.

Potentia remotissima. A most improbable possibility; remotest possibility.

Potestas alienandi. Power to alienate; right of alienation.

Potestas regis est facere justitiam. The power of the king is to execute justice.

Potestas stricte interpretatur. Power should be strictly interpreted.

Potestas suprema seipsum dissolvere potest, ligare non potest. Supreme power can dissolve, but cannot bind itself.

Potior est conditio defendentis. The condition of the defendant is stronger. See *In æquali jure*...

Potior est conditio possidentis. The condition of the actual possessor is stronger. See *In æquali jure*... *In pari delicto*... *Possessio est quasi*...

Pour faire proclamer. An ancient writ addressed to the mayor or sheriff commanding him to proclaim that none cast filth into the ditches or places near adjoining; and if any cast already, to remove it.

Pour seisir terres la femme que tient in dower. A writ whereby the king seized upon the land which the widow of a tenant, that held *in capite*, had for her dower, if she married without the king's leave.

Præcipe. Command. A writ commanding a person to do a thing or to show cause why he has not done it.

Præcipe in capite. The writ of right for the king's immediate tenants *in capite* when they were deforced of lands or tenements.

Præcipe quod reddat. Command that he restore. A writ by which a person was directed to restore the possession of land.

Præcipe quod reddat locum tenens. Command that the deputy restore.

Præcipe quod teneat conventionem. The writ which commanded the action of covenant in fines.

Præcipitum. A punishment inflicted on criminals by casting them headlong from some high place.

Præcludi non. Not to be stopped or debarred.

Prædes litis et vindictiarum. (Rom. L.) The bail or security given by a possessor for the restitution of the land or other subject-matter of the *lis* (suit) together with its profits (*vindictæ*) in case of his failure in the action.

Prædia bella. Booty; property seized in war.

Prædia volantia. Quickly passing or volatile estates; as furniture, which by the local law of the Duchy of Brebant were ranked among immoveables.

Prædium. (Rom. L.) An estate; lands in the provinces; property.

Prædium dominans. (Rom. L.) An estate to which a servitude is due; the ruling estate; the dominant tenement.

Prædium rusticum. (Rom. L.) An estate which is not intended for the use of man's habitation, such as meadows, gardens, &c.

Prædium rusticum et ignobile. The property or estate of rustics and ignorant (obscure) persons. Copyhold lands were so called. See *Terra vulgi*.

Prædium serviens. (Rom. L.) An estate which suffers or yields a service to another estate; the servient tenement.

Prædium urbanum. (Rom. L.) A building or edifice intended for the use of man.

Præ-emptio. Pre-emption. The right of buying a thing before others.

Præfectus vigilum. The chief officer of the night watch.

Præfectus villæ. The mayor of a town or village.

Præfine. Same as *Primer fine*.

Præjuramentum. See *Antejuramentum*.

Præmissa. The premises; the parts of a deed containing the *exordium*, *recitals*, *testatum*, *parcels*, and general words.

Premium. A reward; present; consideration; something given to invite a loan or a bargain. The yearly or other periodical sum of money payable upon policies of insurance for the keeping up thereof.

Premium pudicitie. Consideration given to a previously virtuous woman by the person who may have seduced her.

Præmunire. To be forewarned; to be advised. Statute of *Præmunire* (16 Richard II, c. 5) forbidding appeals to the Court of Rome, or execution in England of the process of that Court.

Præmunire facias. Cause to be forewarned. A writ calling upon the accused to appear

and answer the contempt wherewith he stands charged.

Præmuniti, i. e., præmoniti. Forewarned, i. e., forewarned.

Prænomen. (Rom. L.) The name of a person distinguishing him from other members of the same family.

Præpositura (Sc. L.) The entrusting of a wife with authority to transact certain business on behalf of her husband and to bind him by her contracts. A wife is impliedly *præposita negotiis* for the purpose of managing her husband's household.

Præpositus. An officer. A steward or bailiff of an estate. Also the person from whom descents are traced.

Præpositus ecclesiæ. A church-reeve or churchwarden.

Præpositus villæ. A high or petty constable in a town. A head officer of the king in a town, manor, or village.

Præpropera consilia raro sunt prospera. Overhasty counsels are seldom prosperous.

Prærogativa regis. The authority or prerogative of the crown.

Præscriptio. Prescription. A title acquired by use and time.

Præscriptio est titulus ex usu et tempore substantiam capiens ab auctoritate legis. Prescription is a title derived from use and time, taking substance from the authority of the law. See the Ind. Lim. Act XV of 1877, ss. 26 and 27, and the Ind. Base. Act V of 1882, ss. 15 to 17.

Præsentia corporis tollit errorem nominis; et veritas nominis tollit errorem demonstrationis. The presence of the body cures error in the name: the truth of the name cures error of description. See *Falsa demonstratio*...

If I give a horse to J D., when present, and say to him, 'J. S., take this', it is a good gift, notwithstanding I call him by a wrong name. So, if I say to a man, 'Here I give you my ring with the ruby and deliver it, and the ring is set with a diamond and not a ruby, yet this is a good gift. But where things are particularly described as 'my box of ivory lying in my study, sealed up with my seal of arms,' 'My suit of arras, with the story of Nativity and Passion,' inasmuch as of such things there can only be a detailed and circumstantial description, so the precise truth of all the recited circumstances is not required; but in these cases the rule is, *ex multitudine signorum colligitur identitas vera*; therefore, though my box were not sealed, and though the arras had the story of Nativity and not of the Passion embroidered upon it, yet if I had no other box and no other suit, the gifts would be valid, for there is certainly sufficient, and the law does not expect a precise description of such things as have no certain denomination.

So, in determining the nature of a document (e.g., for ascertaining the stamp-duty) regard must be had to the *real* nature of the document, and not to the title which may have been given to it by the parties, if the contents thereof show that the title is a misnomer (*Pendse v. Mulse*, 3 Bom. H. C., A. C., 94). It is not the name given to a contract, but its contents, or the relations constituted by it, that determine its nature (*Abdulbhai v. Kashi*, 11 Bom. 462).

Preparatory to a trial for murder, the name of A, a juror on the pannel, was called, and B, another juror on the same pannel, appeared, and by mistake answered to the name of A, and was sworn as a juror. A conviction ensued, which a majority of the Court held ought not to be set aside, one of the learned judges thus founding his opinion upon the maxim cited:—"This mistake is not a mistake of the man, but only of his name. The very man, who having been duly summoned, and being duly qualified, looked upon the prisoner, and was corporeally presented and shown to the prisoner for challenge, was sworn and acted as a juror. At bottom, the objection is but this, that the officer of the Court, the juror being present called and addressed him by a wrong name. Now it is an old and rational maxim of law, that where the party to a transaction, or the subject of a transaction, are either of them actually and corporeally present, the calling of either by a wrong name is immaterial. *Præsentia corporis tollit errorem nominis*..... As soon as the prisoner omitted the challenge, and thereby in effect said 'I do not object to the juror man there standing' there arose a compact between the Crown and the prisoner that the individual juror man there standing, corporeally present, should try the case. It matters not, therefore, that some of the accidents of that individual such as his name, his address, his occupation, should have been mistaken. *Constat de corpore*." (*Reg. v. Miller*, 27 L. J. M. C. 121)

Præstat cautela quam medela. Caution (prevention) is better than cure; wherefore preventive justice is administered by the Courts issuing injunctions to prevent the continuance or recurrence of damage.

Præsumitur pro legitimatione. It is presumed for legitimacy; presumption is in favour of legitimacy.

Præsumitur pro negante. It is presumed for the negative. The rule is applied in the House of Lords when the numbers are equal on a motion.

Præsumptio. Presumption. Intrusion or the unlawful taking of anything.

Præsumptio ex visu scriptioris. A person's handwriting may be proved by one who has seen him write other documents, when the presumption is called *præsumptio ex visu scriptioris*; if it is proved by one who knows his writings by correspondence, &c., it is called *præsumptio ex scriptis olim visis*;

if by an expert, *præsumptio ex scripto nunc viso*.

Præsumptio juris. Presumption of law.

Præsumptiones hominis (or facti, or judicii). Presumptions of fact; natural presumptions arising from the circumstance of any particular case, and drawn by a judge from the evidence.

Præsumptiones juris et de jure. Presumptions of law and by principles of law, otherwise called irrebuttable presumptions, which the law will not suffer to be rebutted by any counter evidence; as that an infant under seven years is not responsible for his actions.

Præsumptiones juris tantum. Presumptions of law alone, which hold good in the absence of counter evidence, but against which counter evidence may be admitted; as the property of goods is presumed to be in the possessor; every presumption of this kind must necessarily yield to contrary proof.

Præsumptio violenta, plena probatio. Strong presumption is full proof. See *Violenta præsumptio*..

Præsumptio violenta valet in lege. Strong presumption is valid in law.

Præsumuntur posteriora à prioribus. From prior acts we presume posterior acts; as where the sealing and delivery, of a deed, purporting to be signed, sealed and delivered, are inferred on proof of the signing only. This is manifestly the reverse of *priora præsumuntur à posterioribus*, and as a general rule the presumption is much weaker.

Prætor. A consul; a judge; a magistrate.

Pator Fidei-Commissarius. The judge at Rome who compelled the performance of all fiduciary obligations and deeds of trust.

Prætor heredem facere non potest, lex facere potest. The prætor cannot make an heir, the law can. The law and not the prætor can make an heir. This is a maxim of Roman Law, but it does not imply that a testator could not (for in fact he always could) in Roman Law constitute his own heir. See the English maxim *Solus Deus*...

Præteritio. (*Rom. L.*) The entire omission of a child's name in the father's will, which rendered it null: *exheredatio* (disinheritance) being allowed but not *præteritio*.

Prætorium. A palace; Court; tribunal; council.

Prava consuetudo. A depraved custom.

Pravitas incrementum. Increase of lewdness.

Praxis. Use; practice.

Praxis judicium est interpretis legum. The practice of the judges is the interpreter of the laws.

Præcario. Held by permission.

Præcarium. (*Rom. L.*) A form of permissive occupancy, the duration of which depended on the owner's will. A contract by which the owner of a thing gives it to another at his request to use as long as the owner shall please.

Prece-partium. At the request of the parties. This was when a suit was continued by the prayer, assent, or agreement of both the parties.

Precludi non. Not to be barred. The name of the formal commencement of a replication to a plea in bar.

Precontractus. A pre-contract. See *A vinculo*...

Prejudiciales. Prejudged.

Prender de baron. To take a husband. This was used for an exception to disable a woman from pursuing an appeal of murder against one who had killed her former husband.

Prendre. (Fr.) To take. The power, or right of taking a thing before it is offered. Thus heriot custom is said to be in *prendre* and not in *render*, because the lord may seize the identical thing itself, but he cannot distrain for it. *Profit à prendre* is a right to enter on the land of another, and take therefrom a profit of the soil, in which respect it is distinguished from *easement* which is a privilege without profit.

Prêt. (Fr. L.) A loan. It may be either *prêt à usage* (loan for use) corresponding to the *commodatum* of the Roman Law, or *prêt à consommation* (loan for consumption) corresponding to the *mutuum* of the Roman Law.

Pretium affectionis. An imaginary value put on a thing by the fancy of the owner in his affection for it.

Pretium feudi. Price of the fee or feud. When felony occasioned the forfeiture of the felon's lands or goods, it was said that such an act was as much as his estate was worth *i. e.*, it cost him his estate.

Pretium hominis. Price of the man. See *Æstimatio capitis*.

Pretium in numeratâ pecunia consistere debet. In a sale, the price should consist in cash or money told. See the Ind. Con. Act IX of 1872 ss. 77 and 78.

Pretium periculi. The price of the risk or hazard; compensation for a risk undertaken. In bottomry bonds, the lender is to run the risk in consideration of the exorbitant interest allowed as the *pretium periculi*.

Pretium rei. The price or value of a thing.

Pretium succedit in loco rei. The price succeeds in the place of the thing.

Primæ impressionis. Of the first impression. A case *primæ impressionis* is a case of a new kind for which there is no precedent applicable in all respects and which must be decided entirely by reason and not from any authority or precedent.

Prima facie. On the first appearance. A party is said to have a *prima facie* case when the evidence in his favour is sufficiently strong for his opponent to be called on

to answer it. Such evidence is called *prima facie* evidence, and can be overthrown only by the rebutting evidence adduced on the other side.

Primaria ecclesia. The head church. See *Matræ ecclesia*.

Primaria preces. *Primæ.* The right of the crown to name the first prebend that becomes vacant after the accession of the Sovereign, in every church of the empire.

Prima seisin. The first possession of right.

Prima tonsura. The first crop.

Primer fine. The first fine due to the king by ancient prerogative in actions for land, which was a noble for every five marks of land sued for, or one tenth of the annual value. As opposed to *post fine*, which see.

Primer seisin. The first possession of right. A fine due to the king on the death of each tenant *in capite*.

Primitiæ. First fruits presented to the gods by the ancients. The first year's profits of a benefice, formerly payable to the Crown.

Primo excutienda est verbi vis, ne sermonis vii obstructur oratio, sive lex sine argumentis. The full meaning of a word should be ascertained at the outset, in order that the sense may not be lost by defect of expression, and that the law be not without reasons.

Primum decretum. A provisional decree.

Principes et republica ex justa causa possunt rem meam auferre. The prince and the republic can take away my property for a just cause. The maxim has application to the taking of property by public authorities under the Land Acquisition or other special Acts, for the public good.

Principale recordum. The principal or original record.

Principalis debet semper excuti antequam perveniat ad fidei jussores. The principal should always be exhausted before coming upon the sureties.

The rule is to be applied with great caution, for mere reimbursement on the part of the creditor to sue the principal debtor, or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety (*Ind. Con. Act IX of 1872, s. 137*). The surety is discharged by any contract between the creditor and the principal debtor by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor (*Ibid., s. 134*). A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue the principal debtor, discharges the surety, unless the surety assents to such contract (*Ibid., s. 135*). Where a contract to give time to the principal debtor is made

by the creditor with a third person, and not with the principal debtor, the surety is not discharged (*Ibid.*, s. 136).

A creditor is not bound to exhaust his remedy against the principal debtor before suing the surety. When a decree is obtained against a surety, it may be enforced in the same manner as a decree for any other debt (*Lachman Joharimal v. Bapu Khandu*, 6 Bom. H. C. A. C., 241).

In a suit against the principal debtor and the surety, the omission of the creditor to effect service of summons on the principal debtor does not discharge the surety from his liability under s. 134 of the Contract Act (*Shaikh Ali v. Mahomed*, 14 Bom. 267).

The omission of a creditor to sue his principal debtor within the period of limitation discharges the surety under s. 134 of the Contract Act. S. 137 of the Act does not limit the effect of s. 134. It applies only to a forbearance during the time that the creditor can be said to be forbearing to exercise a right still in existence (*Kudha v. Kintlock*, 11 All. 310; dissenting from *Hajarimal v. Krishnarav*, 5 Bom. 647, and *Krishna Kishori v. Radha*, 12 Cal. 535).

Though the creditor may be entitled, after a certain period, to make a demand and enforce payment of the debt, he is not bound to do so; and provided he does not preclude himself from proceeding against the principal, he may abstain from enforcing any right which he possesses. If the creditor has voluntarily placed himself in such a position that he cannot sue the principal, he thereby discharges the surety. But mere delay on the part of the creditor unaccompanied by any valid contract with the principal will not discharge the surety (*Per Pollock, C. B., Price v. Kirkham*, 3 H. & C. 441).

Principia data sequuntur concomitantia. Given principles follow their concomitants.

Principia probant, non probantur. Principles prove, they are not proved.

Principiis obsta. Nip in the bud; oppose beginning; meet the very beginnings.

Principium est potissima pars cujusque rei. The principle of anything is its most powerful part.

Priora præsumuntur à posterioribus. From the posterior acts we presume the prior; as where a prescriptive right or a grant is inferred from modern enjoyment.

Prior patens. The first applicant Used in probate practice.

Prior tempore potior jure. He who is prior in point of time is stronger in law. See *Qui prior est tempore...*

Prisone forte et dure. Strong and close confinement. See *Petne forte...*

Prit. Ready.

Prit præsto sum. I am ready.

Privatio præsupponit habitum. A deprivation presupposes a possession.

Privatis pactionibus non debium est non lædi jus cæterorum. The right of others is doubtless not to be injured by private agreements. See *Debitorum pactionibus...*

Privatorum conventio juri publico non derogat. A private agreement does not derogate from the public right. See *Modus et conventio...*

Privatum commodum publico cedit. Private good yields to public.

Privatum incommodum publico bono pensatur. Private loss or inconvenience is compensated by public good. See *Salus populi...*

Privatum sigillum. Privy seal. A seal which the king uses to such grants or things as pass the great seal.

Privilegium clericale. The benefit of clergy. An arrest of judgment in criminal cases. An immunity of the persons of the clergy in criminal proceedings before secular judges. Now abolished.

Privilegium est beneficium personale, et extinguitur cum persona. A privilege is a personal benefit, and dies with the person.

Privilegium est quasi privata lex. Privileges is, as it were, a private law.

Privilegium non valet contra rem publicam. A privilege avails not against public good or against the interest of the public. See *Salus populi...*

Privilegium piscandi. The right of fishing.

Pro, For; in respect of.

Pro æstimatione capitis. According to the price of the head. See *Æstimatio capitis.*

Proamita. A great paternal aunt; the sister of one's grandfather.

Proamita magna. A great great-aunt.

Pro apparatus personæ regis. For the pleasure or pomp of the king's person.

Proavia. A great-grandmother.

Proavia-atavus. See *Puter.*

Proavunculus. A great uncle.

Proavus. The great-grandfather. See *Pater.*

Probandi necessitas incumbit illi qui agit. The necessity of proving lies upon him who brings the charge.

Probatio artificialis vel inartificialis. An artificial or inartificial proof.

Probatio mortua. Dead proof. Proof by deeds, writings, &c., as opposed to *probatio viva voce*, oral proof by witnesses.

Probationes debent esse evidentes, scilicet perspicue et faciles intelligi. Proofs ought to be evident, to wit, perspicuous and easily understood.

Probatio testamentorum. Probate of wills or testaments.

Probatissimis, præsumuntur media. The extremes being proved, the mean is presumed.

years, the lease is good *pro tanto*, i. e., for such an estate as he may lawfully convey.

Protectio trahit subjectionem, et subjectio protectionem. Protection begets subjection, and subjection protection. As the subject owes the sovereign obedience, so the sovereign is bound to defend the laws, the persons and the property of his subjects. See *Nemo patriam in quâ...*

Pro tempore. For the time being.

Pro tempore, pro spe, pro commodo minuitur eorum pretium atque augescit. Their value is lessened or increased according to time, expectation, or profit.

Protestando. In protesting. In pleadings, the interposition of an oblique allegation or denial of some fact by protesting that such a matter did or did not exist, and at the same time avoiding a direct affirmation or denial.

Pro turpi causa. For a dishonest purpose.

Prout According as; even as.

Prout lex postulat. As the law requires.

Prout occasio postulat. According as the occasion or circumstances may require.

Prout patet per recordum. According as it appears by the record.

Pro veritate. As true.

Pro vero et justo debito. For a true and just debt.

Proviso. Provided; stipulation; caution; condition. A condition inserted into a deed upon the observance whereof the validity of the deed depends. A clause in a legislative enactment, whereby a condition or limitation is imposed upon its operation. A trial by proviso was a method whereby a defendant brought the cause to trial if, after issue joined, the plaintiff neglected to do so.

Proviso est providere presentia et futura, non praterita. A proviso is to provide for the present or future, not the past.

Provisors. The statute of *Provisors* (25 Edw. III) forbidding nominations by the Pope to English livings.

Proxeneta. A factor; agent; broker. Plural, *Proxenetae.*

Proximus amicus. The next friend or next of kin.

Prudenter agit qui præcepto legis obtemperat. He acts prudently, who obeys the command of the law.

Pubertas. Ripe age or puberty; from 14 years and upwards in men, and 12 years and upwards in women.

Publica judicia. (*Rom. L.*) Popular actions. Such actions as are maintainable by any of the subjects for recovery of the penalty incurred under some penal statute. See *Qui tam.*

Publicatio. An adjudging to the public treasury. Confiscation.

Publici juris. Of public right. A thing is so called when it is public property.

Publicum bonum privato est præferendum. The public good must be preferred to private advantage. See *Salus populi...*

Pueri sunt de sanguine parentum sed pater et mater non sunt de sanguine puerorum. Children are of the blood of their parents, but the father and mother are not of the blood of the children.

Pueritia. Childhood; boyhood; from 7 to 14 years.

Puis darrem continuance. A plea alleging that since the last continuance or adjournment of the court, new ground of defence has arisen.

Puisne. Younger; subordinate; junior.

Pur (pour) auter (autre) vie. For or during the life of another; for such a period as another person shall live; as a tenant for the life of another.

Pur cause de vicinage. Because of vicinage or neighbourhood.

Pur cause de ward. In right of wardship.

Purgatio. Purgation. Applied to the methods by which, in former times, a man cleared himself of a crime of which he was accused. This was either canonical (*canonica*), by the oaths of twelve neighbours that they believed in his innocence; or vulgar (*vulgaris*), by fire or water ordeal, or by combat.

Pur le pais. In the country; on the spot.

Pur mordre le droit. For the concealment of a right.

Purum villenagium. A pure villenage.

Purus idiota. An absolute or congenital idiot.

Putagium hæreditatem non adimit. Incontinence does not take away an inheritance.

Putativus. Putative, reputed, or commonly esteemed, in opposition to notorious and unquestionable.

Q

Quâ. In what; in which; in the character of; as far as.

Quâcunque viâ datâ Whichever way you take it.

Quadrantata terra. Farundel of land; the fourth part of an acre of land.

Quadriennium utile. The term of four years allowed in Scotch Law to a minor, after his majority, in which he may by suit or action endeavour to annul any deed to his prejudice granted during his minority.

Quadruplatores. (*Rom. L.*) Informers, who if their information were followed by conviction, had the fourth part of the confiscated goods for their trouble.

Quæ ab initio inutilis fuit institutio ex post facto convalescere non potest. That which was a useless institution at the commencement cannot grow strong by an after-fact.

Quæ accessionum locum obtinent extinguuntur cum principales res peremptæ fuerint. Those things which are incidents are extinguished when the principals (to which they are incident) are extinguished. The obligation of the surety is accessory to that of the principal, and is extinguished by the release or discharge of the latter. See *Quum principalis*.. The converse, however, of this rule does not hold, and the reason is that *accessorium non trahit principale*.

Quæ ad terram. Which to the land.

Quæ ad unam finem loquuntur sunt, non debent ad alium detorqueri. Those words which are spoken to one end, ought not to be perverted to another.

Quæ coherent personæ à personâ separari nequeunt. Things which belong to the person ought not to be separated from the person.

Quæ communi legi derogant strictè interpretentur. Things which derogate from the common law are to be strictly interpreted.

Quæ contra rationem juris introducta sunt, non debent trahi in consequentiam. Things introduced contrary to the reason of law, ought not to be drawn into a precedent. See *Quod contra rationem*...

Quæ coram nobis resident. Which remain before us.

Quæcunque intra rationem legis inveniuntur intra legem ipsam esse judicantur. What things soever appear within the reason of a law are to be considered within the law itself.

Quæ dubitationis causâ tollendæ inseruntur communem legem non lædunt. Things which are inserted for the purpose of removing doubt, hurt not the common law.

Quæ dubitationis tollendæ causâ contractibus inseruntur, jus commune non lædunt. Clauses inserted in contracts to take away all ground for doubt, do not impede the operation of the general law.

Quæ est eadem. Which is the same thing. Words formerly used in pleas of justification by defendant for trespass, to indicate that the thing justified was the same thing as that of which the plaintiff complained.

Quæ fuit uxor. Who was the wife.

Quæ incontinenti vel certo fiunt in esse videntur. Things which are done directly and certainly, appear already in existence.

Quæ in curiâ regis acta sunt ritè agi præsumuntur. Things done in the king's court are presumed to be rightly done.

Quæ in partes dividi nequeunt solida à singulis præstantur. Feudal services which are incapable of division are to be performed in whole by each individual.

Quæ inter alios acta sunt nemini nocere debent, sed prodesse possunt. Transactions among strangers ought to hurt no man, but may benefit. See *Res inter alios acta*...

Quæ in testamento ita sunt scripta ut intelligi non possint, perinde sunt ac si scripta non essent. What has been so written in a will as to be unintelligible, is to be regarded as though it had not been written.

Quæ ipso usu consumuntur. Which are wasted by the very use of them.

Quæ legi communi derogant non sunt trahenda in exemplum. Things derogatory to the common law are not to be drawn in a precedent.

Quæ legi communi derogant strictè interpretantur. Those things which are derogatory to the common law, are to be strictly interpreted.

Qualibet concessio domini regis capi debet strictè contra dominum regem, quando potest intelligi duabus viis. Every grant of our lord the king ought to be taken strictly against our lord the king, when it can be understood in two ways.

Qualibet concessio fortissimè contra donatorem interpretanda est. Every grant is to be most strongly taken against the grantor. The rule is one for the construction of written documents, but it is subject to all other more pertinent rules of interpretation, which usually suffice without the necessity of resorting to this maxim, which at best is an unsafe and desperate resort. See *Verba chartarum*... *Ambiguum pactum*...

Qualibet jurisdictio cancellos suos habet. Every jurisdiction has its own bounds.

Qualibet pardonatio debet capi secundum intentionem regis, et non ad deceptionem regis. Every pardon ought to be taken according to the intention of the king, and not to the deception of the king.

Qualibet pœna corporalis, quamvis minima, major est qualibet pœna pecuniaria. Every corporeal punishment, although the very least, is greater than any pecuniary punishment.

Quæ mala sunt inchoata in principio vix bona peraguntur exitu. Things bad in principle at the commencement seldom achieve a good end. See *Quod ab initio*...

Quæ neque tangi nec videri possunt. Things which can neither be felt nor seen.

Quæ non valeant singula, juncta juvant. Things which do not avail separate, when joined avail. Words which are ineffective when taken singly, operate when taken conjointly. One provision of a deed or other instrument must be construed by the bearing it will have upon another. See *Noscitur a sociis*.

Quæ plura. What more. A writ to inquire into the extent of the lands of which a man died seised, when all the land was supposed not to be found by the proper officer. It was to inquire of what more lands or tenements the party died seised.

Quæ præter consuetudinem et morem majorum fiunt, neque placent, neque recta videntur.

Things which are done contrary to the custom and usage of our ancestors, neither please, nor appear right.

Quære. Ask; inquire. A note for the reader to make further inquiry, where any point of law or matter of debate is doubted as not having sufficient authority to maintain it.

Quæ relicta sunt et tradita. Which have been left and delivered.

Quærens non invenit plegium. Seeking he has not found the pledge. A sheriff's return signifying that the plaintiff has not furnished security. When a writ was directed to the sheriff with the clause *si fecerit te securum* (if he shall have made you secure i. e., if he shall have furnished you with security effectually to prosecute his claim), and the plaintiff failed to find security, the sheriff made his return in the above words.

Quærere dat sapere quæ sunt legitima vere. To inquire into is the way to know what things are truly lawful.

Quæ rerum naturâ prohibentur, nullâ lege confirmata sunt. Things which are prohibited by the nature of things are confirmed by no law.

Quære tamen. Inquire however.

Quæritur ut crescant tot magna volumina legis. In promptu causa est, crescit in orbe dolus. It is questioned how so many books of law increase. The reason is plain; deceit increases in the world.

Quæ servitia. See *Per quæ servitia.*

Quæstio. (*Rom. L.*) A commission to inquire into a criminal matter.

Quæstio fit de legibus, non de personis. The question must refer to the laws, and not to persons. In a court of judicature regard must be had to the letter and the meaning of the law, and not to the rank or situation of either of the contending parties.

Quæstor. A Roman Magistrate.

Quæstus. That which a man acquires by purchase as opposed to that acquired by descent or hereditary right (*hereditas*).

Quæ sunt minoris culpæ sunt majoris infamiæ. Things which are of the smaller guilt, are of the greater infamy.

Quæ tangi non possunt. Those things which are intangible; incorporeal property.

Quæ tangi possunt. Those things which are tangible; corporeal property.

Quale jus. What right. A writ that lay where an abbot, prior or other man of religion, had judgment to recover land by default of the tenant against whom the land was demanded. The writ lay for the escheator to inquire what right he had to recover, or whether the judgment were not obtained by collusion between the demandant and the tenant to defraud the lord claiming by escheat.

Qualitas quæ inesse debet facile præsumitur. A quality which ought to form a part is easily presumed.

Quam. As; which.

Quamdiu bene se gesserit. So long as he shall conduct himself properly. See *Dum bene... Ad vitam...*

Quamdiu potest valere testamentum, tamdiu legitimus non admittitur. No successor, pointed out by law only, shall take the inheritance, so long as it is possible for the will to operate.

Quam legem exteri nobis posuere, eandem illis ponemus. The law which foreign powers have observed towards us, the same shall we observe towards them.

Quam longum debet esse rationabile tempus, non definitur in legi; sed pendet ex discretione justitiariorum. How long 'reasonable time' ought to be is not defined by law, but depends upon the discretion of the judge.

Quamvis aliquid per se non sit malum, tamen si sit mali exempli, non est faciendum. Although a thing in itself may not be bad, yet, if it hold out a bad example, it is not to be done.

Quando. When.

Quando adest provisio partis, adest provisio legis. When provision of party is lacking, provision of law is present.

Quando accederint. When they may happen; when they may fall in. A judgment by which the creditor of a deceased person, who, having brought an action against the executor or administrator, has been met with a plea of *plene administravit*, is entitled to any assets which may in future fall into the hands of the defendant as legal representative of the deceased.

Quando aliquid conceditur, id quoque concedi videtur, sine quod res ipsa percipi non debeat. When anything is granted, that also is deemed to be impliedly granted with it, without which the principal subject matter of the grant (i. e., the express grant) could not be enjoyed. See *Circumque aliquis quid...*

Quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud. When anything is commanded, everything by which it can be accomplished is also commanded. When the law commands a thing to be done, it authorizes the performance of whatever may be necessary for executing its commands. When a mandate or power is entrusted to an agent, every power, is impliedly given him which is necessary to enable him to carry out the mandate (*Ind. Con. Act IX of 1872, s. 188*). Thus, when a statute gives a justice of the peace jurisdiction over an offence, it impliedly gives him power to apprehend any person charged with such offence. So, constables whose duty it is to see the peace kept, may, when necessary, command the assistance of others (*Crim. Pro. Code V of 1898, s. 42*). In like manner, the sheriff is authorized to take the *posse comitatus*, or power of the county, to help him in executing a

writ of execution, and every one is bound to assist when required so to do (*Foijamb's Case*, 5 Rep. 116; *Hornden v. Standish*, 6 C. B. 521). The persons named in a writ of rebellion and charged with the execution of it, have a right at their discretion, to require the assistance of any of the liege subjects of the Crown to aid in the execution of the writ (*Miller v. Knox*, 4 Bing. N. C. 574). See *Cuiusque aliquis...*

When power is given to present a document for registration under s. 32 of the Indian Registration Act, it does not mean the mere act of presentation, but includes the further action, *viz.*, admission of execution, and all other acts required to complete registration (*Bom. Registration Circular*, No. 11 of 1879).

Quando aliquid prohibetur ex directo, prohibetur et per obliquum. When anything is prohibited directly, it is prohibited also indirectly.

Quando aliquid prohibetur, prohibetur omne per quod devenitur ad illud. When anything is prohibited, every thing which tends towards it is also prohibited. Whatever is prohibited by law to be done directly cannot legally be effected by an indirect and circuitous contrivance (*Booth v. Bank of England*, 7 Cl. & F. 59), and a transaction will not be upheld which is a mere device for carrying into effect that which the legislature has said shall not be done (*Morris v. Blackman*, 2 H. & C. 912).

Quando charta continet generalem clausulam, posteaque descendit ad verba specialia quæ clausulæ generali sunt consentanea, interpretanda est charta secundum verba specialia. When a charter contains a general clause, and afterwards descends to special words, which are agreeable to the general clause, the charter is to be interpreted according to the special words.

Quando de unâ et eadem re duo onerabiles existunt, unus pro insufficientiâ alterius, de integro onerabitur. When there are two persons liable for one and the same thing, one for the other's default will be charged for the whole.

Quando dispositio referri potest ad duas res ita quod secundum relationem unam vitietur, est secundum alteram utilis sit, tum facienda est relatio ad illam ut valeat dispositio. When a disposition may refer to two things, so that by the former it would be vitiated and by the latter it would be preserved, then the relation is to be made to the latter, so that the disposition may be valid.

Quando duo jura concurrunt in una et eadem personâ, æquum est ac si essent in diversis. When two rights concur in one and the same person it is the same as if they were in separate persons. See *Unus homo...*

Quando jus domini regis et subditi concurrunt, jus regis præferri debet. When the right of a king and the right of a subject concur, the king's right shall be preferred.

In such a case *detur digniori* is the rule. Accordingly, if a chattel be bequeathed to the king and a subject jointly, the king shall have it, there being this peculiar quality inherent in the prerogative that the king cannot have a joint property with any person in one entire chattel, or such property as is incapable of division or separation. Where the title of the king and of a subject concur, the king takes the whole.

If a bond be made to the king and a subject, the king shall have the whole penalty; if two persons own a horse jointly, or have a joint debt owing to them on bond, and one of them assign his part to the king, the king shall have the entire horse or debt; for it is not consistent with the dignity of the Crown to be partner with a subject, and where the king's title and that of a subject concur or are in conflict, the king's title is to be preferred. If one of two joint tenants of a chattel incurred a forfeiture of one undivided moiety of the chattel to the Crown for a crime, the Crown being thus in joint possession with a subject, took the whole.

The king's debts shall, in suing out execution, be preferred to that of every other creditor who had not obtained judgment before the king commenced his suit. Where the sheriff seizes under a *fi. fa.*, and after seizure, but before sale under such writ, a writ of extent is sued out and delivered to the sheriff, the Crown is entitled to priority, and the sheriff must sell under the extent, and satisfy the Crown's debt, before he sells under the *fi. fa.* See also *Reg v. Edwards*, under the maxim, *Fractionem diei...*

The king is not bound by a sale in market overt, but may seize to his own use a chattel which has passed into the hands of a *bona fide* purchaser for value.

A judgment-debt due to the Crown is in Bombay entitled to the same precedence in execution as a like judgment-debt in England, if there be no special legislative provision affecting that right in the particular case. Under similar circumstances, a judgment-debt due to the Secretary of State in Council for India is in Bombay entitled to the like precedence, and the reason is that such debt is vested in the Crown, and, when realised, falls into the State Treasury. The nature of the cause of action in respect of which the judgment was recovered does not affect the right of the Crown or of the Secretary of State in Council for India to priority. It is a principle recognised by the laws of many countries that claims of the Crown or State are entitled to precedence, *e. g.*, the Hindu, Roman and French Codes, the laws of Spain, the United States of America, Scotland and England (*Secretary of State v. Bombay Shipping and Landing Co. Ltd.*, 5 Bom. H. C., O. C., 23).

The Crown has the first claim to the proceeds of a pauper suit to the extent of the amount of the Court-fee that would have been payable at the institution of the suit,

had the plaintiff not been a pauper, and s. 309 of the Code of Civil Procedure does not preclude the Crown or its representative from urging the prerogative (*Ganpat Patya v. Collector of Kanara*, 1 Bom. 7; followed in *Gulzari Lal v. Collector of Bareilly*, 1 All. 596, and *Collector of Moradabad v. Muhammad Daim Khan*, 2 All. 196)

The Indian Insolvent Debtors Act 1848 (11 and 12 Vic. c. 21, s. 62) provides that no debt due to the king shall be deemed to be such a debt as to entitle any person to apply for the benefit of that Act.

Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest. When the law gives a man anything, it gives him that without which it cannot exist. See *Cuicunque aliquis... Quando aliquid mandatur...*

Quando lex aliquid alicui concedit, omnia incidentia tacite conceduntur. When the law gives anything to anyone, all incidents are tacitly given.

Quando lex est specialis, ratio autem generalis, generaliter lex est intelligenda. When the law is special, but its reason general, the law is to be understood generally.

Quando plus fit quam fieri debet, videtur etiam illud fieri quod faciendum est. When more is done than ought to be done, that too seems to be done which still remains to be done. When a man performs more than he ought to perform, he nevertheless is considered to have performed that which ought to have been performed: the act being void as regards the excess only. If a man do more than he is authorized to do under a power, it shall be good to the extent of his power. Thus if he have power to lease for ten years, and he lease for twenty years, the lease for the twenty years shall in equity be good for ten years of the twenty (*Bartlett v. Rendle*, 3 M. & S. 99; *Doe v. Matthews*, 5 B. & Ad. 298; 39 R. R. 485). So, if the grantor of land is entitled to certain shares only of the land granted; and if the grant import to pass more shares than the grantor has, it will nevertheless pass those shares of which he is the owner.

See *Omne majus... Qui facit per alium...*

Quando res non valet ut ago, valeat quantum valere potest. When anything does not operate in the way I intend, let it operate as far as it can. If a deed cannot operate according to the intention of the party, it shall nevertheless operate in that form which by law will effectuate the intention. See *Quam quod ago...*

In construing a will, the intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible (*Ind. Suc. Act X of 1865, s. 14*).

Quando verba statuti sunt specialia, ratio autem generalis, generaliter statutum est intelligendum. When the words of a statute are special, but the reason general, the statute is to be understood generally.

Quant bestes sauvages le roye aler hors del forrest, le property est hors del roy; silz sount hors del parke capienti conceditur. When the wild beasts of the king go out of the forest, the property is out of the king; if they be out of a park, the ownership of them is granted to the captor. See *Fera igitur...*

Quantum. How much; proportion.

Quantum damnificatus. How much damaged or endamaged. An issue to fix the amount of compensation for damage.

Quantum libet. As much as you please.

Quantum meruit. So much as he has deserved. An action of *assumpsit* grounded on a promise, express or implied, to pay the plaintiff for work and labour so much as his trouble is really worth. A reasonable remuneration.

Quantum sufficit. As much as is sufficient.

Quantum valebat. So much as it was worth. An action on an implied promise to pay for goods sold as much as they were worth.

Quare. Wherefore; why.

Quare clausum fregit. Wherefore he broke the close. An action for trespass for breaking and entering the plaintiff's close, which includes every unwarrantable entry on another's soil.

Quare ejecit infra terminum. Wherefore he ejected him within the term. A writ which lay for a lessee who had been ejected from his farm before the expiration of his term. It lay not against the original wrong doer, but against a feoffee or other person in possession claiming under the wrong doer. Now obsolete.

Quare impedit. Wherefore he hinders or disturbs. A writ lying for him who had purchased an advowson against a person who hinders or disturbs him in his right of advowson by presenting a clerk thereto when the church is void. It differed from the assise of *darrein presentment*, because the latter lay where a man or his ancestors, under whom he claimed, had formerly presented to the church, while the former lay for him who was purchaser himself.

Quare impedit infra semestre. Wherefore he disturbs within six months.

Quare incumbravit. Wherefore he hath encumbered. In an action of *quare impedit*, if the bishop, after the prohibitory writ *ne admittis* was served upon him, admitted any person other than the presentee of the plaintiff, then the plaintiff after having obtained judgment in the *quare impedit* was entitled to a special action against the bishop called a *quare incumbravit* to recover the presentation and also satisfaction in damages for the injury done.

Quare intrusit matrimonio non satisfacto. Wherefore he has intruded, the marriage not being satisfied. A writ that lay anciently where the lord proffered suitable marriage to his tenant, being his ward, and he

refused and entered into the land and married himself to another without agreement first made with his lord and guardian.

Quare non admisit. Wherefore he has not admitted him. A writ which lay against a bishop where a man had recovered his representation in a *quare impedit*, and the bishop refused to admit his clerk.

Quare non permittit. Wherefore he does not permit. A writ that lay for one who had a single turn of presentation to a living, against the proprietor of the advowson, for interfering with the plaintiff's right of presentation.

Quare obstructit. Why he has obstructed him. A writ which lay for him who having a liberty to pass through his neighbour's ground, could not enjoy his right, because the owner had so obstructed it.

Quare vi et armis. Wherefore with force and arms.

Quarta legitima. (Rom. L.) The legitimate fourth. The fourth part of a man's estate to which his relations were entitled after his death.

Quarto die post. On the fourth day after. The fourth day named in the writ for appearance, within which it was formerly sufficient for defendant to appear.

Quasi. As if; as it were; in a manner. This word prefixed to a noun means that although the thing signified by the combination of '*quasi*' with the noun does not comply in strictness with the definition of the noun, it shares its qualities. As, *quasi-contract*, an act which has not the strict form of a contract, but yet has the effect of it; an implied contract. *Quasi-trustee*, a person who reaps a benefit from a breach of trust, and so becomes answerable as a trustee. *Quasi tort*, a wrong for which a person is responsible, though it is not committed by himself, e.g., a master is liable for any thing done by a servant in the course of his employment.

Quasi ex contractu. In nature of a contract; as if from a contract.

Quatenus. As far as; to the end that.

Que estate. Whose or which estate. An expression formerly used in pleading to avoid prolixity in setting out titles to land; as if B. claiming a lawful title to land, pleads a conveyance of the land to A, which estate (*quem statum*) B hath, without setting out at length how the estate came from A to B. Hence the expression came to signify an estate acquired otherwise than by descent. Such an estate enabled a man to acquire by prescription such rights as were appendant or appurtenant to lands enjoyed by himself and those whose estate he had.

Que est eadem. Que est le mesme. The same as *Quæ est eadem.*

Quemadmodum ad questionem facti non respondent iudices, ita ad questionem juris non respondent juratores. In the same manner that judges do not answer to questions of

fact, so jurors do not answer to questions of law. Questions of fact are to be decided by the jury; questions of law, by the judge.

Quem redditum reddit (reddat). An old writ that lay for him to whom a rent charge was granted, by fine levied in the king's court, against the tenant of the land that refused to attorn to him, thereby to cause him to attorn and pay the rent which he rendereth.

Quem statum. See *Que estate.*

Quendam. A certain one.

Querela. A complaint. An action or declaration preferred in any Court of justice. See *Audita querela. Duplex querela.*

Querela coram rege et consilio discubenda et terminanda. A writ whereby a plaintiff was called upon to specify and substantiate the wrongs, of which he complained, before the king and his council.

Querela frescæ fortis. A complaint of fresh force.

Querela inofficiosi testamenti. A complaint against an informal or inofficious will. An inofficious will was one made without proper regard to the claims of the kindred. According to the Roman Law it could be challenged by the children through the process called *querela inofficiosi testamenti*, on the ground that the testator must have lost the use of his reason. It resembled the old English writ *de rationabili parte bonorum*, which see.

Querens. A plaintiff or complainant.

Queritur. He complains.

Questus est nobis. He has complained to us. A writ of nuisance which by 13 Edw. I lay against him to whom a house or other thing that caused a nuisance descended or was alienated. Before that statute, the action lay only against him who first levied or caused the nuisance to the damage of his neighbour.

Quia caret forma. Because it is wanting in form.

Qui accusat integræ famæ sit et non criminosus. Let him who accuses be of clear fame, and not criminal. See *Nemo allegans...*

Qui adimit medium, dirimit finem. He who takes away the middle destroys the end.

Quia dominus remisit curiam. Because the lord has put off his court. Words applied to a writ of right brought originally in the King's Court instead of the court baron, because the lord held no court or had waived his right to try the same.

Quia duplex est et caret forma. Because it is ambiguous, and is wanting in form.

Quia ejus anima in cælum assumitur. Because his soul is taken into heaven. Spoken of the death of a saint.

Quia emptores. Because purchasers. The statute 18 Edw. I, c. 1, which began with these words. It was passed to prevent subinfeudation by enacting that upon any future alienation of land the feoffee should

hold the same direct of the chief lord and not of his feoffer.

Quia improvide emanavit. Because issued erroneously. A *superedeas* to quash and nullify a writ on the ground that it issued erroneously or improvidently.

Quia interest reipublice, ut sit finis litium. Because it concerns the State that there should be an end to law suits. *Interest reipublice ut sit...*

Qui alienum fundum ingreditur venandi aut aucupandi gratia potest a domino prohibere ne ingreditur. He who enters upon another man's land, for the purpose of hunting, or fowling, may be prohibited from entering by the owner.

Qui aliquid statuerit parte inaudita altera, æquum licet decerit, hæud æquum facerit. He who decides anything, one party being unheard, though he should decide right, does wrong.

Qui alterius jure utitur eodem jure uti debet. He who is clothed with the right of another ought to be clothed with the very same right.

Qui approbat non reprobat. One who approves cannot reprobate. He who accepts cannot reject. See *Allegans contraria...*

Qui a reconvu que ce n'étoit pas moi. Who has recognized that it was not I.

Qui arma gerit. Who bears a coat of arms.

Quia timet. Because he fears. A bill filed in Chancery for guarding against a future injury of which the plaintiff was apprehensive; as by a remainderman for the purpose of securing the property against any accident which might befall it before it should fall into his possession; or by a person who feared that some instrument, really void but apparently valid, might hereafter be used against him, and which he wished to be cancelled. To support a bill *quia timet*, the plaintiff must have a title in possession or expectancy, and the property must be in danger (*Satoor v. Satoor*, 2 Mad. H. C. R. 8).

Quia tollit causam. A precept from the sheriff for removing a writ of right into a county court. Also called a *tolt*.

Qui bene distinguit, bene docet. He who distinguishes well, teaches well.

Qui bene interrogat, bene docet. He who questions well, learns well.

Quibus auxiliis. By which assistance.

Qui concedit aliquid, concedere videtur et id sine quo concessio est irrita, sine quo res ipsa esse non potuit. He who concedes anything is considered as conceding that without which his concession would be void, without which the thing itself could not exist. See *Cuiusque aliquid quid...*

Qui contemnit præceptum, contemnit præcipientem. He who contemns the precept, contemns the person giving it.

Quicquid demonstrare rei additur satis demonstrata frustra est. Whatever is added

to demonstrate anything already sufficiently demonstrated, is surplusage. See *Falsa demonstratio...*

Quicquid est contra normam recti, est injuria. Whatever is against the rule of right, is an injury.

Quicquid inædificatur solo, solo cedit. See *Quicquid plantatur...*

Quicquid in calore iracundiæ vel fit vel dicitur non prius ratum quam si perseverantiâ appareat animi judicium fuisse. Nothing said or done in the heat of passion is irrevocable until perseverance shows that it was the deliberate purpose of the mind. Hence agreements without consideration are required by law to be in writing and registered. See the Ind. Con. Act IX of 1872, s. 25 (1).

Quicquid in excessu actum est lege prohibetur. Whatever is done in excess is prohibited in law.

Quicquid iudicis auctoritati subijcitur novitati non subijcitur. What ever is subject to the authority of the judge is not subject to novelty.

Quicquid plantatur (or fixatur) solo, solo cedit. Whatever is fixed to the soil, goes with or belongs to the soil. See *Omne quod...*

As a general rule, whatever is affixed to the soil becomes, in contemplation of law, a part of it, and is subjected to the same rights of property, as the soil itself. Immoveable property, as defined in the General Clauses Act X of 1897, s. 3 (25), includes land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. If trees are planted or seed sown in the land of another, the owner of the soil will also become owner of the tree, the plant, or the seed, as soon as it has taken root. But, where a man, supposing that he has an absolute title to an estate builds upon the land with the knowledge of the rightful owner, who stands by, and suffers the erection to proceed, without giving any notice of his own claim, he will be compelled by a Court of equity, in a suit brought for recovery of the land, to make due compensation for such improvements (*Ramsden v. Dyson*, L. R. 1 H. L. 129; *Sevaklal Karsandas v. Ora Nirmudain*, 8 Bom. H. C., O. C. 77; *Mussamat Rani Rama v. Shailch Jan Mahomed*, 3 B. L. R., A. C. 18; *Fremji Jivan Bhat v. Haji Cassum*, 20 Bom. 298; *Thakoor Chunder v. Ramdhone*, B. L. R., Sup. Vol. 595; 6 W. R. 228; *Sufdur Ali Khan v. Joy Narayan*, 16 W. R. 162).

A tree, whether alive or dead, so long as it is attached to the soil, is realty; by severance from the soil, it becomes personalty (*Re Anstie*, 30 Ch. D. 485; *Re Llewellyn*, 37 Ch. D. 324). Trees, so long as they are not severed or cut, are *prima facie* to be taken as passing with the land on which they grow. And a sale of a house and compound (unless it could be shown that they

were specially excepted) would comprise the trees thereon (*Faqueer Soonarr v. Mt. Khuderun*, 2 N.-W. P. 251). Where a ryot mortgaged certain guava trees which he had planted on a portion of his holding, and was subsequently ejected by the zamindar under an ejectment-decree, and after the ejectment the mortgagees obtained a decree on their mortgage deed, *held*, in a suit between the mortgagees and the zamindar, that their lien on the trees was destroyed by the ejectment of the ryot (*Mussamat Pearun v. Ram Narain Singh*, 1 N.-W. P. 21¹). Where the *mutuali* of a shrine had planted a tree on land admittedly belonging to the shrine, *held*, that he could acquire no property in the tree by so doing; nor could any benefit which he might have derived by taking the fruit of the tree enable him to acquire any right of ownership in the tree against the shrine. The land admittedly belonging to the shrine, the tree must have the same character until the contrary was proved (*Nurbibi v. Maganlal*, 16 Bom. 547). See also *Deoki Nandan v. Dhian Singh*, under the maxim, *Cujus est solum...*

When a tenant, either occupancy, or tenant at-will, plants trees on his holding, the property in those trees, in the absence of custom or contract to the contrary, attaches to the land, and the tenant has no power of selling or otherwise transferring those trees (*Janki v. Sheodhar*, 28 All. 211; *Kansalia v. Gulab Kunwar*, 21 All. 297; *Imtad Khan v. Bhagirath*, 10 All. 159; *Nafar Chandra Pal v. Ram Lal Pal*, 22 Cal. 742). The tenant can only make a valid hypothecation of the trees for the term of his tenancy; with his ejectment from such land and the cessation of his tenancy such an hypothecation ceases to be enforceable (*Ajuchia Nath v. Situl*, 3 All. 567).

Emblements comprise not only corn sown, but roots planted and other annual artificial profits of the land; and these, in certain cases, are distinct from the realty, and subject to many of the incidents attending personal property. With respect to this the Transfer of Property Act IV of 1882, s. 108 (i) provides that when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them.

The doctrine as to fixtures is also founded upon this maxim. If a tenant or lessee has so fixed any chattel to a house, or so constructed or annexed any building to the land, that it becomes part and parcel of the land, or is not removable without material and permanent damage to the house or freehold, its removal will be waste. But some things not so permanently annexed may be removed, and things which though attached are by law severable are (with

some inaccuracy of language) called *fixtures*, and are variously named, as trade fixtures, tenant fixtures, &c. There is a *prima facie* inference from the annexation of a chattel to the freehold, that the property therein vests in the landlord or owner (*Lancaster v. Ecc*, 28 L. J. C. P. 235; 5 C. B. N. S. 717). But things slightly annexed for ornament or convenience, and intended as a temporary, and not as a permanent improvement, may be removed, if it can be done without any or considerable damage (*Buckland v. Butterfield*, 2 B. & B. 45). So, what is thus annexed for the more convenient carrying on of a trade or occupation, as machinery, &c., may be removed (*Elmes v. Marve*, 3 East 38; 6 R. R. 523; *Hellawell v. Eastwood*, 6 Exch. 295; *Holland v. Hodgson*, L. R. 7 C. P. 328); and also what is merely accessory thereto (if not of a permanent and substantial nature), as a slight building over an engine (*Whitehead v. Bennett*, 27 L. J. Ch. 474; *Metropolitan A. Co. v. Brown*, 28 L. J. Ch. 581). So if the upper part of a structure is removable at pleasure, merely resting upon a foundation let into the land, the foundation belongs to the landlord, but the rest may be removed; if the upper part was in no way annexed, it would be a mere chattel, and not a fixture, and would be recoverable accordingly at any time (*Dean v. Allaly*, 3 Esp. 11; *Wansborough v. Maton*, 4 A. & E. 884). The right of the tenant to remove fixtures must be exercised during the tenancy, and not after the term has expired or he has quitted the premises; unless perhaps the duration of the tenancy was uncertain, and then on its sudden expiration the tenant might remove them within a reasonable time (*Weeton v. Woodcock*, 7 M. & W. 14; *Leader v. Homewood*, 27 L. J. C. P. 316; *Pugh v. Arton*, L. R. 8 Eq. 626). As between vendor and vendee, and mortgager and mortgagee, the fixtures attached to the freehold, though such as to be removed by a tenant during his term, will pass with it in the absence of any express provision to the contrary in the deed (*Cullwick v. Swindell*, L. R. 3 Eq. 249; *Clinie v. Wood*, L. R. 3 Exch. 257; *Boyd v. Sharrock*, L. R. 5 Eq. 72; *Holland v. Hodgson*, L. R. 7 C. P. 328). The rule that renders fixtures irremovable obtains with the most rigour in favour of the heir as against the executor; it is less rigid as between the executor of a tenant for life and a remainderman (*D'Eyncourt v. Gregory*, L. R. 3 Eq. 382); while in a case between landlord and tenant there is still more favour shown to the claim to sever and remove.—*Collett on Torts*, 6th Edn., pp. 206-7.

The question whether fixtures are removable by a tenant as against his landlord has nothing to do with the question whether they are seizable in execution as goods and chattels under the decree of a Small Cause Court (*Miller v. Brindaban*, 4 Cal. 946; 4 C. L. R. 460).

Under the Transfer of Property Act IV of 1882, the lessee may remove, at any time

during the continuance of the lease, all things which he has attached to the earth; provided he leaves the property in the state in which he received it. He must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes (s. 108, *cls. [h] and [p]*).

The mere erection by the tenant of permanent structures upon the land let to him, in the knowledge of and without interference by his lessor, would not suffice to raise the equitable estoppel against the latter. *Ramsden v. Dyson* (L. R. 1 H. L. 129) followed. That the maxim *quicquid inadi-ficatum solo, solo cedit*, has, in Indian Law, no application to the present case, and the rule established in India is that of s. 108 of the Transfer of Property Act. The owner of land cannot sue for ejectment where he sees another person erecting buildings upon it, and knowing that such other person is under the mistaken belief that the land is his own property, purposely abstains from interference, with a view of claiming the building when it is erected. *Gopi v. Bisheshwar* (All. W. N., 1885, p. 100) overruled.—*Beni Ram v. Kundan Lal* (1 Bom. L. R. 400, F. C.).

Quicquid solvitur, solvitur secundum modum solventis; quicquid recipitur, recipitur secundum modum recipientis. Money paid is to be applied according to the intention of the party paying it; and money received according to that of the recipient.

Where a debtor owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly (*Ind. Con. Act IX of 1872, s. 59*). Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits (*Ibid.*, s. 60). But where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably (*Ibid.*, s. 61).

The general rule is that the debtor may, in the first instance, appropriate the payment, *solvitur in modum solventis*; if he omit to do so, the creditor may make the appropriation, *recipitur in modum recipientis*; but if neither make any appropriation, the law appropriates the payment to the earlier debt (*Per Tindal, C. J., Mills v. Fowkes*, 5 Bing. N. C. 461; *The Mecca*, L. R.

1897, A. C. 286; 66 L. J. P. 86; *S. Mooneappah v. Vencutarayadoo*, 6 Mad. H. C. R. 32).

There is a presumption, until the contrary appear, that a man pays his own money on account of what he alone, and not another, owes, and that he pays on account of what he owes to the payee alone and not of what he owes to the payee and others (*Nottidge v. Prichard*, 2 Cl. & F. 393; 32 R. R. 187; *Burland v. Nash*, 2 F. & F. 687).

The creditor's appropriation to a part of a time barred debt does not revive the debt so as to entitle him to sue for the balance. In order to revive a barred debt, there must be a promise in writing to pay the debt. See the Ind. Con. Act IX of 1872, s. 25 (3), and *Hirada Karibasappa v. Gadigi Muddappa*, 6 Mad. H. C. R. 197.

The debtor may appropriate the payment at the time when he makes the payment but not afterwards (*The Mecca*, L. R. 1897, A. C. 286; 66 L. J. P. 86). A creditor cannot without the payer's assent alter an appropriation which he has once communicated to the payer (*Bodenham v. Purchas*, 2 B. & Ald. 39; *Fraser v. Birch*, 2 Knapp, 380; *Bank of Scotland v. Christie*, 8 C. & M. 214; *Hasonbhoy v. Clapham*, 7 Bom. 51).

A general payment made in one year, without proof that it was in satisfaction of the rents of that year, may be applied by the creditor in satisfaction of the arrears of the previous year (*Ahmuty v. Brodie*, W. R., Act X, 14; *Ranee Shurno Moyee v. Kashee Kant Bhuttacharjee*, 7 W. R. 511).

Payments unapplied by either the debtor or the creditor should be appropriated to the earlier items making up the debt due. This rule is not impaired by the decisions in *Mills v. Fowkes*, 5 Bing. N. C. 455, and *Nash v. Hodgson*, 6 DeG. M. and G. 474 (*Hirada Karibasappa v. Gadigi Muddappa* 6 Mad. H. C. R. 197).

In case of a current account between banker and customer, all the sums paid in form one blended fund, the parts of which have no longer any distinct existence; the customer draws upon the entire fund. In such case there is generally no room for any other appropriation than that which arises from the order in which the receipts and payments take place and are carried to the account. Presumably, it is the sum first paid in that is first drawn out; it is the first item on the debit side of the account that is discharged or reduced by the first item of the credit side; the appropriation is made by the very act of setting the two items against each other (*Per Grant, M. R., Clayton's Case*, 1 Mer. 572; 15 R. R. 161).

Where the defendants, directors of a company, borrowed sums from the plaintiffs on account of the company and agreed that the plaintiffs should repay themselves the amount from the first moneys received by

them on account of the said company, and held themselves personally responsible to the extent of half the amount of the deficiency, and where the plaintiffs, instead of applying the first moneys coming to their hands in liquidation of the amount advanced under the guarantee, applied such moneys towards the payment of other debts due to themselves from the company, *Held*, in an action against the executrix of one of the defendants, that the plaintiffs were bound to appropriate the first receipts to the payment of the guaranteed debt, and that, as they had not done this the guarantee was discharged (*Nicholls v. Wilson*, 4 Cal. 560; 3 C. L. R. 361).

Qui cum alio contrahit, vel est, vel esse debet, non ignarus conditionis ejus. He who contracts with another, either is, or ought to be, acquainted with the condition of the contractor.

Quicumque jussu judicis aliquid fecerit non videtur dolo malo fecisse, quia parere necesse est. Whoever does anything by the command of a judge, is not reckoned to have done it with an evil intent, because it is necessary to obey.

Quid. What.

Quidem. Indeed; truly.

Qui destruit medium destruit finem. He who destroys the middle destroys the end.

Quid juris clamat. What right he claims. A judicial writ which lay for the grantee of a reversion or remainder to compel the particular tenant to attorn.

Qui doit inheriter al pere doit inheriter al fils. He, who would have been heir to the father, shall be heir to the son. See *Hæres legitimus* est...

Qui dolo desiderit possidere pro possidente damnatur quia pro possessione dolo est. He who has frequently transferred his possession, is to be condemned as if he were in possession, because his fraud is equivalent to possession.

Quid pro quo. One thing for another; a mutual exchange; e. g., a mutual undertaking in a contract. The mutual consideration and performance of both parties to a contract. Without such consideration, the bargain is called a *nudum pactum*.

Quid sit jus, et in quo consistit injuria, legis est definire. What right is, and what injury is, it is the business of the law to declare.

Quietantia. An acquittance.

Quietare. To quit, acquit, or discharge; to save harmless.

Quiete clamare. To quit claim, or renounce all pretensions of right and title.

Quieti redditus. Quit rents.

Quietus. At rest; undisturbed; acquitted; discharged. Specially used of the sheriffs and other accountants to the Exchequer, when they had given in their accounts.

Quietus de escapio. See *Escapio quietus*.

Quietus esse à querelâ. To be exempt from the customary fees to be paid to the king or the lord. To be freed from the fines or amercements which would otherwise have been imposed.

Quietus redditus. Quit rent. Rent paid by the freeholders and copyholders of a manor in discharge or acquittance of their services.

Qui ex damnato coitu nascuntur inter liberos non computentur. Those that are born of an unlawful intercourse, are not esteemed among the children or legal heirs. Neither a bastard nor any person not born in lawful wedlock can be, in the legal sense of the term, an heir; for a bastard is reckoned by the law to be *nullius filius*, and, being thus the son of nobody, he has no inheritable blood in him, and cannot take property by succession. Moreover, as a bastard cannot be heir himself, so neither can he have any heirs but those of his own body who claim by a lineal descent from himself; and therefore, if a bastard purchases land, and dies seised thereof without issue and intestate, the land shall escheat to the lord of the fee. See *Hæres legitimus* est...

Qui facit per alium, facit (or est perinde ac si faciat) per se. He who acts through another (is in the same position as if he) acts through himself.

The maxim enunciates the general doctrine on which the law relative to the rights and liabilities of principal and agent depends. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into, and the acts done, by the principal in person (*Ind. Con. Act IX of 1872, s. 226*). When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal (*Ibid., s. 227*). Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction (*Ibid., s. 228*). Any notice given to or information received by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given or obtained by the principal (*Ibid., s. 229*).

Payment to an authorized agent (*Bostock v. Hume*, 8 Scott, N. R. 590), as an auctioneer in the regular course of his employment (*Mews v. Carr*, 1 H. & N. 484; *Bell v. Balls*, L. R. 1897, 1 Ch. D. 663; 66 L. J. Ch. 397) is payment to the principal (*Sykes v. Giles*, 5 M. & W. 645); and generally, payment to an agent, if made in the ordinary course of

business, operates as payment to the principal (*Williams v. Deacon*, 4 Ex. 397; *Underwood v. Nicholls*, 17 C. B. 239); but such payment, in the absence of a custom of trade to the contrary, must be made in cash (*Barker v. Greenwood*, 2 Y. & C., Ex. R. 414; *Sweeting v. Pearce*, 9 C. B. N. S. 534; 30 L. J. C. P. 109). An auctioneer has no authority to receive payment by a bill of exchange (*Williams v. Evans*, L. R. 1 Q. B. 352). In the same manner, delivery of goods sold to the buyer's authorized agent is a delivery to the buyer (*Ind. Con. Act IX* of 1872, s. 90).

In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. Such a contract shall be presumed to exist in the following cases:—

(1) Where the contract is made by an agent for the sale or purchase of goods for a merchant 'resident abroad'; (2) Where the agent does not disclose the name of his principal; (3) Where the principal, though disclosed, cannot be sued (*Ibid.*, s. 230).

On this maxim depends also the liability of persons in partnership for the acts of a member of the firm. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm (*Ibid.*, s. 250). Each partner who does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose (*Ibid.*, s. 251).

See *Delegatus non... Respondeat superior*.

Qui habet jurisdictionem absolendi, habet jurisdictionem ligandi. He who has the jurisdiction of loosening has the jurisdiction of binding.

Qui hæret in literâ, hæret in cortice. He who considers merely the letter of an instrument, goes but skin-deep into its meaning. It is a general rule connected with the interpretation of deeds and written instruments, that, where the intention is clear, too minute a stress should not be laid on the strict and precise signification of words. For instance, by the grant of a remainder, a reversion may pass, and *e converso*; and if a lessee covenant to leave all the timber which was growing on the land when he took it, the covenant will be broken, if, at the end of the term, he cuts it down, but leaves it there; for this, though a literal performance of the covenant, would defeat its intent. See *Mala grammatica... Benigna faciendæ*...

Qui in jus dominiumve alteri succedit jure ejus uti debet. He who succeeds to the right of property of another is clothed with the same rights as those attached to the assignor. See *Assignatus utitur*...

Qui in utero est, pro jam nato habetur, quoties de ejus commodo queritur. He who is in the womb is held as already born, whenever a question arises for his benefit. Under the Indian Succession Act X of 1865, s. 23, there is no distinction, for the purpose of succession, between those who were actually born in the lifetime of the deceased, and those who, at the date of his death, were only conceived in the womb, but who have been subsequently born alive.

A child *in ventre sa mere* at the time of the father's death is by the rules of the Common Law of England, and by the Civil Law, to all intents and purposes, a child as much as if it had been born in the father's lifetime (*Doe v. Clarke*, 2 H. Bl. 401).

Under the Hindu Law, a son conceived is equal to a son born; accordingly, an alienation by a Hindu to a *bonâ fide* purchaser for value is liable to be set aside by a son, who was in his mother's womb at the time of the alienation, to the extent of his share (*Sabapathi v. Somasundaram*, 16 Mad. 76). The right of an after born son to a share, as a co-parcener, in the divided property, depends upon his mother being pregnant with him at the time of the partition (*Yekeyamian v. Agnisvarian*, 4 Mad. H. C. R. 307). An adoption cannot be made by a Hindu who has a male issue living. An adoption by him, however, with knowledge of his wife's pregnancy, has been held valid (*Nagabhushanam v. Seshamma*, 8 Mad. 180). Under the Mahomedan Law, where a person dies leaving his wife pregnant, and has sons, the share of one son must be reserved in case a posthumous son should be born.

Qui jure suo utitur, neminem lædit (or *nemini facit injuriam*). He who exercises a right does an injustice to nobody. No injury is done by one who makes a reasonable use of his rights. See *Sic utere tuo... Nullus videtur*...

Qui jussu judicis aliquod fecerit non videtur dolo malo fecisse, quia parere necesse est. Where a person does an act by command of one exercising judicial authority, the law will not suppose that he acted from any wrongful or improper motive, because it was his bounden duty to obey.

When a Court has jurisdiction of a cause and proceeds *inverso ordine*, or erroneously, the officer of the Court who executes according to its tenor (*Munday v. Stubbs*, 10 C. B. 432) the precept or process of the Court, is not liable to an action (*Prentice v. Harrison*, 4 Q. B. 852). But when the Court has no jurisdiction of the cause, the whole proceeding is *coram non judice*, and actions lie against the officer without any regard to the precept or process; for in this case it is not necessary to obey one who is not judge of the cause, any more than it is to obey a mere stranger (*Marshalsea Case*, 10 Rep. 70; *Taylor v. Clemson*, 2 Q. B. 1014). See *Judicium a non...*

In India the protection is greater and includes acts done in good faith by the judicial officer, *though without jurisdiction*. Where a judicial officer has acted in good faith, believing himself to have jurisdiction, no officer of any Court or other person bound to execute the lawful warrants or orders of any such officer acting judicially, shall be liable to be sued in any Civil Court for the execution of any warrant or order, which he would be bound to execute if within the jurisdiction of the person issuing the same (*Act XVIII of 1850, s. 1*).

As to the criminal liability of such officers, the Ind. P. C. XLV of 1860, s. 78 provides that nothing which is done in pursuance of, or which is warranted by, the judgment or order of a Court of Justice, if done whilst such judgment or order remains in force, is an offence, *notwithstanding the Court may have had no jurisdiction* to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction. See also ss. 42 and 132 of the Code of Crim. Pro. V of 1898. See *De fide et officio...*

Quilibet potest renunciare juri pro se introducto. Any one can renounce a right introduced for himself. Any one may, at his pleasure, renounce the benefit of a stipulation introduced in his own favour.

Accordingly, a defendant may decline to avail himself of a defence which would be at law a valid and sufficient answer to the plaintiff's demand, and waive his right to insist upon that defence.

A man may also not merely relinquish a particular line of defence, but he may also renounce a claim which might have been substantiated, or release a debt which might have been recovered by ordinary legal process; or he may by his express contract or stipulation, exclude some more extensive right which the law would otherwise have conferred upon him. In all these cases the rule holds *omnes licentiam habere his quæ pro se indulta sunt renunciare*. See also *Modus et conventio...*

Any one may waive or renounce the benefit of a principle or rule of law that exists only for his protection; e.g., an ambassador may waive his extra territoriality or exemption from the jurisdiction of the local Courts, a witness may waive his privilege, and generally a party may waive any relief to which he is entitled when successful in an action, e.g., his right to costs out of the other or defeated party.

Although a man may renounce a right or benefit introduced for himself, *pro se introductum*, he cannot renounce that which has been introduced for the benefit of another; thus the rule that a child within the age of nurture cannot be separated from the mother by order of removal, was established for the benefit and protection of the child, and therefore cannot be dispensed

with by the mother's consent (*Reg. v. Birmingham, 5 Q. B. 210*). See also s. 817 of the Ind. P. C. XLV of 1860. But a release by one of several joint creditors, in the absence of fraud and collusion, operates as a release of the claim of the other creditors, and may be pleaded accordingly. On the other hand, the creditor's discharge of one joint or joint and several debtor, does not free the debtor from responsibility to the other joint debtor or debtors (*Ind. Con. Act IX of 1872, s. 44*). A release of the principal debtor discharges the surety (*Ibid., ss. 184-5*).

Every promisee may dispense with or remit wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it, any satisfaction which he thinks fit (*Ind. Con. Act IX of 1872, s. 63*). See also s. 130 of the Ind. Evi. Act I of 1872.

But the words *pro se* show that no man can renounce a right, of which the claims of society forbid the renunciation (*Per Lord Westbury, Hunt v. Hunt 31 L. J. Ch. 175*). For instance, if an action be brought upon a contract which is shown at the trial to be illegal, the Courts may apply the maxim *ex turpi causa non oritur actio*, although the defendant has not pleaded the illegality (*Scott v. Brown, L. R., 1892, 2 Q. B. 724*). The Indian Limitation Act XV of 1877, s. 4, enacts that every suit instituted, appeal presented and application made after the period of limitation prescribed therefor shall be dismissed, *although limitation has not been set up as a defence*. So also it was held that the lower Appellate Court had done wrong in giving effect to an unregistered bond which by reason of its not having been registered was not admissible in evidence (s. 49 of the Ind. Registration Act III of 1877), even though it was not specifically objected to in either of the Courts below (*Omanath Fatima v. Ghunnoo Singh, 19 W. R. 22*). In the same manner, a party cannot waive an objection to the jurisdiction of the Court. Jurisdiction cannot be conferred on the Court simply by waiver of objection, if the Court has no inherent jurisdiction in the matter (*Kumaramami v. Subbaraya, 23 Mad. 314; Government of Bombay v. Ramalingji, 9 Bom. H. C., A. C., 242*).

Lastly, the maxim does not apply where an express statutory direction enjoins compliance with forms which it prescribes. For instance, a testator cannot dispense with the observance of formalities essential to the validity of a will (*Ind. Suc. Act X of 1865, s. 50*); nor can an individual waive a matter in which the public have an interest (*Per Alderson, B., Graham v. Ingleby, 1 Exch. 657*).

It is not law that every right may be renounced. The general rule is power of renunciation; but there are two marked

classes of exceptions. There can be no renunciation of rights and consequent destruction of relative duties prescribed by an absolute law, nor of rights inherent in man as man. A man may renounce a concrete right, but not one resulting from a natural condition. *Semble*—A karnavan cannot part, by contract, so as to be unable to resume them, with the privileges and duties which attach to his position as karnavan (*N. A. Cherukomen v. Ismala*, 6 Mad. H. C. R. 145).

See *Omnes licentiam*...

Qui mandat ipse fecisse videtur. He who gives the order is taken to be himself the doer. See *Qui facit*...

Qui ne m'a pass reconnu. Who has not recognized me.

Qui non cadunt in constantem virum vani timores sunt estimandi. Those fears are to be esteemed vain which do not affect a firm man. See *Non suspicio*...

Qui non habet in are, luat in corpore; ne quid peccetur impune. What a man cannot pay with his purse, he must suffer in person, lest anyone should sin with impunity.

Qui non habet potestatem alienandi habet necessitatem retinendi. He who has not the power of alienating is obliged to retain.

Qui non improbat approbat. He who does not blame, approves. He who does not deny, admits.

Qui non obstat quod ob stare potest, facere videtur. He who does not prevent what he can prevent, seems to commit the thing.

Qui non prohibet quod prohibere potest, assentire videtur. He who does not forbid what he can forbid, appears to assent.

Que non propulsat injuriam quando potest, infert. He who does not repel an injury when he can, induces it.

Quinquies (Quinto) exactus. Five times exacted. The fifth and last call of a defendant sued for outlawry, when, if he appeared not, he was declared outlawed. See *Exigent*.

Qui obstruit aditum, destruit commodum. He who obstructs an entrance, destroys a convenience. He who obstructs an entry on land, takes away the enjoyment.

Qui omne dicit, nihil excludit. He who says all, excludes nothing.

Qui parcat nocentibus, innocentibus punit. He who spares the guilty, punishes the innocent.

Qui peccat ebrius, lua sobrius. He who errs when drunk, will have to pay when sober. Let him who sins when drunk be punished when sober.

Qui per alium facit per seipsum facere videtur. He who does anything by the instrumentality of another, is considered as doing it himself. See *Qui facit per alium*...

Qui per fraudem agit, frustra agit. What a man does fraudulently, he does in vain.

Qui periculum amat in eo peribit. He who loves danger will perish by it.

Qui plurimum augetur. He who bid the highest in the auction.

Qui potest et debet vetare, jubet. He who is able and ought to forbid, commands. See *Qui non*...

Qui primum peccat ille facit rixam. He who sins first makes the strife.

Qui prior est tempore, potior est jure. He who is first in point of time is more powerful in law.

It is a maxim of equity that where equities are equal the first in time shall prevail. This maxim has been sometimes understood as meaning that as between persons having only equitable interests, *qui prior est tempore, potior est jure*—a proposition far from being true (*Loveridge v. Cooper*, 3 Russ. 30); for the true meaning of the maxim is that, as between persons having only equitable interests, if such equities are in all other respects equal, then, *qui prior est tempore, prior est jure*. In other words, in a contest between persons having only equitable interests, priority of time is the ground of preference last resorted to; i. e., a Court of equity will not prefer one to the other on the mere ground of priority of time, until it finds, on an examination of their relative merits, that there is no other sufficient ground of preference between them (*Rice v. Rice*, 2 Drew. 73; *Gordon v. James*, 80 Ch. D. 249; *National Provincial Bank v. Jackson*, 33 Ch. D. 1). Thus, where A, B, and C, three vendors, entitled in common to a piece of land, sold the land to D, and executed the deed of conveyance to D, in the body of which the payment of the entire purchase-money was acknowledged by A, and B, and also by C; and A and B, and also C severally also signed the receipts endorsed on the deed of conveyance for their respective purchase moneys; and thereupon C (although in fact he had not been paid his proportion of the purchase money) negligently let D take away the deed of conveyance (together with other deeds) in his bag, and D on the same afternoon deposited the deeds with his bankers—the Court held that as between the bankers (equitable mortgagees by deposit) and C (unpaid vendor having equitable lien), the bankers, although second in date, were first in right, because of C's negligence, which consisted in a positive act of imprudence on C's part, and that imprudence led directly to the bankers accepting the proffered security of the title-deeds (*Farrand v. The Yorkshire Bank*, 40 Ch. D. 182; *National Provincial Bank v. Jackson*, 33 Ch. D. 1). But for such positive act C would have retained his priority (*Shropshire Union Railway v. The Queen*, L. R. 7, H. L. 496).

On this maxim, may also depend the right of property in treasure trove, in wreck, derelicts, waifs, and estrays, which being *bona vacantia*, belong by the law of

nature to the first occupant or finder, but which have in some cases been annexed to the supreme power by the positive laws of the State. See *Quod nullius est...* There are, moreover, some few things which, notwithstanding the general introduction and continuance of property, must still unavoidably remain in common; being such that nothing but an usufructuary property is capable of being had in them; and therefore they still belong to the first occupant during the time he holds possession of them. Such, among others, are the elements of light, air and water, which a man may occupy by means of his windows, his gardens, his mills, and other conveniences. See *Et quidem naturali...* Such also are the generality of those animals which are said to be *feræ naturæ*, or of a wild and untameable disposition, which any man may seize upon and keep for his own use or pleasure. See *Feræ igitur...* All these things so long as they remain in possession, every man has a right to enjoy without disturbance, but if once they escape from his custody or he voluntarily abandon the use of them, they return to the common stock, and any man else has an equal right to seize and enjoy them afterwards.

So, the finder of a chattel, lying apparently without an owner may, by virtue of the maxim, acquire a special property therein (*Armory v. Delamirie*, 1 Stra. 504). But chattels lying upon private lands are, *prima facie*, in possession of the owner of the land, and he is therefore entitled to them, in the absence of a better title elsewhere (*Staffordshire Water Co. v. Sharman*, L. R. 1896, 2 Q. B. 44). As against a wrong-doer, mere right to possession constitutes a valid title, and the wrong-doer cannot set up *jus tertii* against one whose claim to the goods in question rests on possession and nothing more (*Jeffries v. G. W. R. Co.*, 5 E. & B. 806).

The maxim however does not affect the specific provisions of s. 50 of the Indian Registration Act III of 1877, under which every document of the nature mentioned therein shall, if duly registered, take effect as regards the property comprised therein against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

Qui pro me aliquid facit, mihi fecisse videtur. He who for me does any thing, appears to do it by me.

Qui rationem in omnibus quærent rationem subvertunt. They who seek a reason for every thing, subvert reason. See *Ubi eadem ratio...*

Qui regulam pro se habet transfert onus probandi in adversarium. He who has a rule in his side shifts the burden of proof on his adversary.

Quis. Who; which.

Qui scit se decipi non decipiat. He who knows that he is deceived is not deceived. See *Non decipitur...*

Qui semel actionem renunciaverit, amplius repetere non potest. He who renounces an action once, cannot anymore repeat it.

Qui semel malus, semper præsumitur esse malus in eodem genere. He who is once bad is presumed to be bad always in the same degree. See *Falsus in uno...*

Qui sentit commodum, sentire debet et onus; et e contra. He who receives the advantage, ought to suffer the burden; and on the contrary. See *Secundum naturam est...*

In the case of a lease the burthen of ordinary repairs is generally thrown upon the occupier or tenant who enjoys the property (*Trans. of Pro. Act IV of 1882*, s. 108, cl. [m]). Where a lessee for himself and his executors covenanted with the lessor to repair the house at all times necessary, and the lessee afterwards assigned it to another party who suffered it to decay, it was held that the assignee was liable to repair, although the lessee had not covenanted for him and his assigns; for the covenant to repair which extends to the support of the thing demised is *quodammodo* appurtenant to it and goes with it; and inasmuch as the lessee had taken upon himself to bear the charges of the reparations, the yearly rent was the less, which was to the benefit of the assignee, and *qui sentit commodum sentire debet et onus* (*Dean and Chapter of Windsor's Case*, 5 Rep. 25). Where a duty to repair is imposed, the liability passes with the enjoyment of the thing demised (*Woodhouse v. Walker*, 5 Q. B. D. 404; 49 L. J. Q. B. 609). So also, the assignee of a chose in action takes it subject to all the equities to which it was liable in the hands of the assignor.

A person who enjoys leasehold property under a will, is generally bound, as between himself and the testator's estate, to perform all the tenant's obligations under the lease which arise during the course of his life interest (*Re Betty*, L. R. 1899, 1 Ch. 821; 68 L. J. Ch. 435; *Re Giers*, 1899, 2 Ch. 55; 68 L. J. Ch. 442), for *transit terra cum onere*.

Where a bequest imposes an obligation on the legatee he can take nothing by it unless he accepts it fully (*Messenge v. Andrews*, 4 Russ. 478; 28 R. R. 156; *Ind. Suc. Act X of 1865*, s. 109). But where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them, and refuse the other, although the former may be beneficial, and the latter onerous (*Ibid.*, s. 110).

Where a contract has been entered into by one man for another, the person on whose behalf it has been made cannot take the benefit of it without bearing its burden. The contract must be performed in its integrity (*Bristow v. Whitmore*, 9 H. L. Cas.

391; *Ind. Con. Act IX* of 1872, s. 199). See also ss. 69 and 70 of the Act.

See *Quod approbo*...

Qui sentit onus sentire debet et commodum. He who suffers the burden ought to receive the advantage. This is the converse of the last preceding maxim.

Qui sine dolo malo ad iudicium provocat non videtur moram facere. He who appeals to law without a fraudulent purpose, is not guilty of delay.

Quisquis præsimitur bonus; et semper in dubis pro reo respondendum. Every one is presumed good; and in doubtful cases the presumption shall be ever in favour of the defendant or the accused.

Qui suum recepit, licet a non suo debitore, non tenetur restituere. He who has recovered his own property, even from one who is not his debtor (*i. e.*, under obligation to give it up), cannot be forced to restore it.

Qui tacet, consentire videtur. He who is silent appears to consent. A man who does not speak when he ought shall not be heard when he desires to speak. The maxim is of a very dangerous and limited application, because the silence may be otherwise explained. But silence under circumstances in which it was a duty to speak, may be fitly construed into consent; and that seems to be the proper limit of the maxim. See the *Ind. Con. Act IX* of 1872, s. 17, explanation.

See *Aliud est tacere*...

Qui tacet, non videtur affirmare. He who keeps silence is not considered as affirming. A man is not guilty of concealment if he merely does not tell, or holds his tongue, unless he was under an obligation to speak out, *e.g.*, in effecting an insurance upon his life or goods, in negotiating family compromises, in making purchases of the trust property from the *cestui que trustent*, and such like. See *Aliud est tacere*...

Qui talia non nisi auditu probari possunt. Because such matters can only be proved by hearsay.

Qui tam. Who as well. *Qui tam* actions are actions brought by any person under a penal statute, to recover a penalty partly for the king or the poor, or some other public use, and partly for himself; so called because they are brought by a person who, as well for the king as for himself, sues in this behalf. Such actions are not given to one especially, but generally to any that will prosecute. They are also called actions popular. See *Publica judicia*.

Qui tardius solvit, minus solvit. He who pays slowly, pays too little. He who pays after the day, pays less than if he paid at the day. This maxim lies at the root of interest on money lent.

Qui timent, cavent et vitant. They who fear, are wary and avoid.

Qui vult decipi, decipiat. Let him be deceived who wishes to be deceived, *i. e.*, the Court will not relieve a person who has been guilty of negligence so gross as to invite deception. See *Ea quæ commendandi*... *Populus vult*...

Quoad. As to; concerning; in respect of; so far as.

Quoad hoc. As to this; concerning this; to this extent; as far as this is concerned. A term often used in law reports to signify, as to the thing named the law is so, &c.

Quoad ultra. As to the rest.

Quo animo. With what intent. A phrase often used in criminal trials where there is no question of certain overt acts having been committed by the accused, and the only question is with what intention they were done. As if a man have taken his neighbour's thing from his possession, and the question arises whether he did so intending to steal, or merely for joke.

Quod. Because; that; which; what.

Quod ab initio non valet, in tractu temporis non convalescit. That which is bad in its commencement, improves not by lapse of time. That which was originally void, does not, by lapse of time, become valid.

A thing which is not valid in law at its first execution does not become valid merely by length of time. For example, a will made by a woman during coverture, and, by reason of that disability rendered invalid by the Wills Act (1 Vic. ch. 26), at the time of executing the will, does not become a valid will merely because the woman lives to become and dies a widow.

So, if a man seized of lands in fee make a lease for twenty-one years, rendering rent to begin presently, and the same day he make a lease to another for the like term, the second lease is void; and even if the first lessee surrender his term to the lessor, or commit any act of forfeiture of his lease, the second lessee shall not have his term, because the lessor at the making of the second lease had nothing in him but the reversion (*Smith v. Stapleton*, Plowd. 432).

This maxim is qualified by another maxim *Quod fieri not debet factum valet*, which see.

But void things may nevertheless be "good to some purpose;" as if A, by an indenture, let B an acre of land in which A has nothing, and A purchases it afterwards, this will be a good lease. See the *Ind. Spec. Rel. Act I* of 1877, s. 18 (a).

Quod ad hunc detinet. Which he detains to this.

Quod edificatur in area legatæ cedit legato. That which is built on the ground devised

passes to the devisee. By the devise of a house, all chattels which are annexed to the house will pass to the devisee. See *Quicquid plantatur...*

Quod alias bonum et justum est, si per vim, vel fraudum petatur, malum et injustum efficitur. What otherwise is good and just, if it be sought by force and fraud, becomes bad and unjust. Thus, it is forbidden, even to those who have title of entry, to enter into lands or tenements otherwise than in a peaceable manner.

Quodammodo. In some manner.

Quod approbo non reprobo. That which I approve I do not reject. What is accepted cannot be rejected. Where a deed or will proposes to make a general disposition of property for the benefit of a person named in it, such person cannot accept a benefit under the instrument without at the same time conforming to all its provisions, and renouncing every right inconsistent with them. For one cannot approve and reprobate at the same time (*Tabot v. Earl of Radnor*, 3 My. & K. 252; *Messenge v. Andrews*, 4 Russ. 478; 28 R. R. 156; *Cooper v. Cooper*, L. R. 7 H. L. 53; *Kerr v. Wauchope*, 1 Bligh, 121; 20 R. R. 1; *The Transfer of Property Act IV* of 1882, s. 109). But where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them, and refuse the other, although the former may be beneficial, and the latter onerous (*Ibid.*, s. 110). See *Qui sentit commodum...*

Quod a quoque pœnæ nomine exactum est id eidem restituere nemo cogitur. No one is obliged to pay back what any one has been made to pay by way of penalty.

Quod capiatur. That he be taken.

Quod clerici non eligantur in officio ballivi. A writ that lay for a clerk who was apprehensive that, by reason of some land he had, he might be elected to be bailiff or such like officer.

Quod computet. That he account. A judgment against the defendant in an action on account.

Quod constat clarè, non debet verificari. That which is clearly apparent, needs not to be verified.

Quod constat curiæ, opere testium non indiget. What is apparent to the Court, needs not the help of witnesses.

Quod contra legem fit, pro infecto habetur. What is done contrary to law, is considered as not done.

Quod contra rationem juris receptum est, non est producendum ad consequentias. That which has been received against the reason of the law is not to be drawn into a precedent. See *Quæ contra rationem...*

Quod corruptè agreatum fuit. Which was a corrupt agreement.

Quod cum. That whereas. Used by way of recital.

Quodcumque aliquis ob tutelam corporis sui facerit, jure id fecisse videtur. Whatever any one does in defence of his person, that he is considered to have done legally. See the Ind. P. C. XLV of 1860, ss. 96 to 102 and 106.

Quod datum est ecclesiæ, datum est Deo. What is given to the church, is given to God.

Quod demonstrandi causâ additur rei satiis demonstratæ frustra fit. What is added to a thing sufficiently palpable for the purpose of demonstration, is vain.

Quod dubitas, ne feceris. Where you doubt, do nothing.

Quod ei deforceat. A writ that lay for a tenant in tail, or for life, who had lost his possession through his default or non appearance in an action, to recover the possession of the land.

Quod errat demonstrandum. Which was to be proved. Abbrev. q. e. d.

Quod est inconveniens, aut contra rationem, non permisum est in lege. What is inconvenient, or contrary to reason, is not permitted in law. See *Argumentum ab inconvenienti...*

Quod est necessarium est licitum. What is necessary is lawful. See *Necessitas quod cogit...*

Quod ex ædibus non facile revellitur. Whatever is strongly affixed to the freehold or inheritance and cannot be severed thence without violence or damage.

Quod ex facto oritur ambiguum, verificatione facti tollitur. Any ambiguity which arises from a fact may be explained by a verification of fact. See *Ambiguitas verborum latens...*

Quod fieri debet facile præsumitur. That which ought to be done is easily presumed. For example, until the contrary is proved, it will be presumed that a lost promissory note or bill or other document was duly stamped (*Bradlaugh v. De Rin*, L. R. 3 C. P. 286; *Nego. Instru. Act XXVI* of 1881, s. 118 [f]). So also, the Court will presume that every document called for and not produced after notice to produce, was attested, stamped, and executed in the manner required by law (*Ind. Evi. Act I* of 1872, s. 89; *Crisp v. Anderson*, 1 Stark. 35; *Crowther v. Solomons*, 6 C. B. 578; 18 L. J. C. P. 92).

See *Omnia præsumuntur rite...*

Quod fieri facias de bonis et catallis. See *Fieri facias.*

Quod fieri non debet, factum valet. What should not be done, yet being done, shall be valid.

A qualification of the maxim *quod ab initio non valet in tractu temporis non convalescit* is afforded by cases where an act done contrary to the express direction or established practice of the law will not be

found to invalidate the subsequent proceedings, and where, consequently, the maxim *quod fieri non debet factum valet* will apply; a thing which ought not to have been done is occasionally permitted to be valid when done.

The maxim will in general be found strictly to apply wherever a form has been omitted which ought to have been observed, but of which the omission is *ex post facto* immaterial.

Where payment was made to special constables by a county treasurer (neither the appointment of the special constable nor the order of their payment, having been made in accordance with the requirements of the law) it was decided that, as the order for payment had been acted upon, the account allowed, and the money paid, the proceedings should not be re-opened (*Reg. v. Lord Newborough*, L. R. 4 Q. B. 585).

The Indian Registration Act III of 1877, s. 87, provides that nothing done in good faith pursuant to the Act or any Act thereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

The maxim is frequently applied under Hindu Law in cases of adoption, where the adoption is irregularly performed or where the rule against the adoption of a particular person is simply *directory* and not *prohibitory* (*Sukhbasi Lal v. Guman Singh*, 2 All. 366; *Hanuman v. Chirai*, 2 All. 164; *Gangasahai v. Lekhray Singh*, 9 All. 253; *Beni Prasad v. Hardai Bibi*, 14 All. 67, F. B.; *Raje Vyankatray v. Jayavantrao*, 4 Bom. H. C., A. C., 191; *Gurlinga Sami v. Rama Lakshamma*, 1 Bom. L. R. 226, P. C.; *Chinna Gaundan v. Kumara Gaundan*, 1 Mad. H. C. R. 54).

But where the adoption of a particular person is *illegal* or *void* or *incestuous*, it cannot be supported on the authority of this maxim (*Bhagirathibai v. Radhabai*, 3 Bom. 298; following *Gopal Suffray v. Hanmant*, 3 Bom. 273; *Tulshi Ram v. Behari Lal*, 12 All. 328; *Lakshmappa v. Ramana*, 12 Bom. H. C., A. C., 364).

As to the applicability of the maxim to marriages irregularly solemnised, without proper consent, See *Consensus, non cubitus*...

There is a known distinction between circumstances which are of the essence of a thing required to be done by an Act of Parliament, and clauses *merely directory* (*Per Lord Mansfield, R. v. Loxdale*, 1 Burr. 447; adopted by Tyndal, C. J., *Southampton Dock Co. v. Richards*, 1 Scott, 239); between a restriction and a moral precept only (*Mangala Debe v. Dinanath Bose*, 4 B. L. R., O. C., 72).

Where the Vice President of a Municipal Commission purporting to act under s. 61 of the Madras Towns Improvement Act III

of 1871, issued a notice of assessment to D, although no case of emergency existed with-in the meaning of s. 27 of the Act, *Held*, that the insufficiency of the notice was no answer to a charge under s. 62 of the Act against D for exercising his profession without paying tax (*Municipal Commrs. of Mangalore v. J. A. Davies*, 7 Mad. 65).

Quod fit in misericordia pro falso clamore. That he be fined for his false claim. A fine imposed on the plaintiff for a vexatious claim.

Quod fuit concessum. Which was agreed to.

Quod inconsulto fecimus consultius revocemus. What we have done without counsel, let us undo or revoke when better advised.

Quod initio vitiosum est non potest tractu temporis convalescere. That which is void from the beginning cannot become valid by lapse of time. See *Quod ab initio*...

Quod in minori valet valebit in majori; et quod in majori non valet nec valebit in minori. What avails in the minor will avail in the major; and what does not avail in the major, will not avail in the minor.

Quod in uno similium valet, valebit in altero. What avails in one of two similar things, will avail in the other.

Quod manus domini regis amoveantur et possessio restitatur petenti, salvo jure domini regis. That the hands of our lord the king be removed and possession be restored to the petitioner, saving the right of our lord the king. The name of the form by which, in the suit of an individual, judgment is given against the Crown. See *Monstrans de droit*.

Quod meum est sine facto meo vel defectu meo amitti vel in alium transferri non potest. That which is mine cannot be alienated or transferred to another without an act of mine amounting to alienation or forfeiture. See *Nemo debet rem*...

Quod meum est sine me auferri non potest. What is mine, cannot be taken away without me.

Quod naturalis ratio inter omnes homines constituit, vocatur jus gentium. That which natural reason has established among all men, is called the law of nations.

Quod naturaliter inesse debet, præsuntur. That which naturally accompanies another thing is assumed to do so. See *Quod tacite*...

Quod necessitas cogit, defendit. What necessity forces, it justifies. A man is not held criminally responsible for actions which he is forced to commit. See *Necessitas inducit*...

Quod non apparet non est; et non apparet judicialiter ante judicium. That which appears not, is not; and nothing appears judicially before judgment. See *De non apparentibus*...

Quod non corrupte agreeatum fuit. What was not agreed corruptly.

Quod non est est. That is not so; which is not so.

Quod non habet principium non habet finem. That which has no beginning has no end. That which has no valid beginning has not a good end. See *Quod ab initio...*

Quod non legitur, non creditur. What is not read, is not believed.

Quod non valet in principali, in accessorio seu consequenti, non valebit; et quod non valet in magis propinquo, non valebit in magis remoto. That which is not good against the principal, will not be good as to accessories or consequences; and that which is not of force in regard to things near it, will not be of force in regard to things remote from it.

Quod nostrum est, sine facto sine defectu nostro, amitti seu in alium transferri non potest. That which is ours cannot be lost or transferred to another without our own act, or our own fault. See *Quod meum est...*

Quod nullius est, est domini regis. That which belongs to no one, belongs to the king, *i. e.*, *bona vacantia* belong to the Crown. It is a general rule that whenever the owner or person actually seised of land dies intestate, and without heir, the law vests the ownership of such land either in the Crown, or in the subordinate lord of the fee, by escheat, and this is in accordance with the spirit of the ancient feudal doctrine expressed in the maxim, *quod nullius est, est domini regis.*

Under the Indian Succession Act X of 1865, s. 23, where the intestate has left no widow, his property shall go to his lineal descendants, or to those who are of kindred to him, not being lineal descendants; and if he has left none who are of kindred to him, it shall go to the Crown.

This ultimate right of the Crown is recognised also by the Hindu and the Mahomedan Law. But the estate of a Brahmin, under Hindu Law, descends eventually to Brahmins or learned priests and it cannot be taken as an escheat by the king. It has, however, been held by the Privy Council in *The Collector of Masulipatam v. Cavalry Venkata Narainapah* (8 Moo. I. A. 529; 2 W. R. 61; 1 Suth. P. C. 476), reversing the decision of the Sudder Court at Madras, that the estate of a Hindu of the Brahman caste dying without heirs, escheats to the Crown as the sovereign power in British India, subject to the trusts and charges, if any, previously affecting the estate.

See *Qui prior est tempore...*

Quod nullius est, id ratione naturali occupanti conceditur. What belongs to nobody is given to the occupant by natural right. According to the law of nature, priority of occupancy alone constitutes a valid title. But this rule has been so much restricted by the advance of civilization, by international laws, and by the civil and exclusive ordinances of each separate State, that it is now of little practical application. See *Qui prior est tempore...*

a-a

Quod nunquam fuit receptor. That he was never the receiver. A defence to an action on account for rents, debts, &c., alleged to have been received by the defendant.

Quod per recordum probatum, non debet esse negatum. What is proved by record ought not to be denied.

Quod partitio fiat. That a partition may be made.

Quod per alluvionem agro tuo flumen adjeit jure gentium tibi acquiritur. Whatever the river adds on to your land by process of alluvion becomes yours by the law of nations.

The increase *per alluvionem* is described to be when the sea, by casting up sand and earth by degrees, increases the land, and shuts itself within its previous limits. In general, the land thus gained belongs to the Crown, as having been part of the very *fundus maris*; but if such alluvion be formed imperceptibly and insensibly, that it cannot by any means be ascertained that the sea ever was there—*idem est non esse et non apparere*, and the land thus formed belongs as a perquisite to the owner of the land adjacent.

The rules of English Law according to which the rights of the Crown or of riparian owners to accretions caused by alluvion are determined with reference to the character of the river and the manner in which the accretion is occasioned, are applicable in British India, unless excluded by enactment or local usage. Accordingly, where a rapid variation in the natural high-water line of a tidal navigable river in Malabar had been caused by acts unlawfully done by the tenants of the riparian owner, *held*, that the Crown was entitled, as against the riparian owner, to the accretion caused by such variation (*Secretary of State for India v. Kadirikutti*, 13 Mad. 369).

Land gained from a river by gradual accretion belongs to the owner of the adjacent soil by the title of occupancy (*Nasarranji Pestanji v. Nasarranji Darrasha*, 2 Bom. H. C., A. C., 345).

Alluvial lands which are gradually gained from the river, belong, by way of accretion, to the lands of the adjoining proprietor. The owner of land before it is inundated remains the owner of it while it is covered with water and after it becomes dry (*Mussumat Imam Bandi v. Hur Gobind Ghose*, 4 Moo. I. A. 403; 7 W. R., P. C., 67; 1 Suth. P. C. 208).

The party to whose lands new formations gradually accrete is entitled to them, though he may not have lost any lands, and though the accretion may have been caused by the washing away of the lands of another person (*Adoo Mean v. Shibo Soonduree*, 2 W. R. 295).

Quod per me non possum, nec per alium. What I cannot do myself, I cannot do by another.

Quod permittat. A writ that lay for the heir of him who was disseised of a common of pasture against the heir of the disseisor.

Quod permittat prosternere. A writ calling upon the defendant to permit the plaintiff to abate a nuisance. It lay against any person who erected a building, though on his own ground, so near to the house of another that it hung over, or became a nuisance to it.

Quod persona nec prebendarii &c. A writ that lay for spiritual persons that were distrained in their spiritual possessions for the payment of a *fifteenth* with the rest of the parish.

Quod plene computavit. That he has accounted fully or perfectly. As defence to an action on account.

Quod pregnantis mulieris damnata poena differatur, quod ad pariat. That the punishment of a pregnant woman condemned, be deferred until she be delivered. See the Code of Crim. Pro. V of 1898, s. 382; *Queen v. Tepoo* (3 W. R., Cr. Rul., 15); *Queen v. Panhee Aurut* (15 W. R., Cr. Rul., 66); *Queen v. Mussamat Ghurbharmee* (W. R., Gap. No., 1864, 1). See *Actus curiæ*...

Quod primum est intentione, ultimum est in operatione. That which is first in intention is last in operation.

Quod principi placuit legis habet vigorem et potestatem conferat. That which has received the assent of the sovereign possesses the force of law; for the people yield to and bestow upon him all sovereign rule and power.

Quod prius est tempore potius est jure. What is first in time is better or stronger in law.

Quod prius est verius est. What is first is true.

Quod pro minore licitum est, et pro majore licitum est. That which is lawful as to the minor is lawful as to the major. See *Quod in minori*...

Quod pure debetur, presenti die debetur. That which is due unconditionally, is due at once.

Quod quæ dissolvitur eodem modo quo ligatur. In the same manner that a thing is bound, in the same manner it is unbound. An agreement is dissolved by the same tie by which it is bound. See *Naturale est*...

Quod querens nil capiat. That the plaintiff take nothing.

Quod quis ex culpâ suâ damnum sentit non intelligitur damnum sentire. No man is injured by what he suffers through his own fault.

Quod recuperet damna sua. That he recover his damages. A judgment for the plaintiff.

Quod remedio destituitur ipsa re valet si culpa absit. That which is without remedy avails of itself if there be no fault in the party seeking to enforce it.

On this maxim depends the doctrine of *remitter*. Where he who has the right of entry in lands, but is out of possession, obtains afterwards the possession of the lands by some subsequent, and, of course, defective title, he is remitted or sent back, by operation of law, to his ancient and more certain title. The possession which he has gained by bad title is *ipso facto* annexed to his own inherent good one; and his defeasible estate is utterly defeated and annulled by the instantaneous act of law, without his participation or consent. But there could be no remitter to supply a title grounded upon matter of record. If A disseise B, *i. e.*, turn him out of possession, and afterwards demise the land to B (without deed) for a term of years, by which B enters, this entry is a remitter to B, who is *in* of his former and surer estate. But if A had demised to him for years, by deed indented, or by matter of record, there B would not have been remitted. For, if a man by deed indented take a lease of his own lands, it shall bind him to the rents and covenants, because a man never can be allowed to affirm that his own deed is ineffectual, since that is the greatest security on which men rely in all manner of contracting.

The principle of this maxim likewise applies in the case of *retainer*, *i. e.*, where a creditor is made executor or administrator to his debtor. If a person indebted to another makes his creditor his executor, or if such creditor obtains letters of administration to his debtor, in these cases the law gives him a remedy for his debt by allowing him to *retain* so much as will pay himself before any other creditor whose debts are of *equal* degree. This is a remedy by the mere act of law, and is grounded upon the reason that the executor cannot, without an evident absurdity commence a suit against himself as representative of the deceased to recover that which is due to him in his own private capacity, but having the whole personal estate in his hands, so much as is sufficient to answer his own demand is, by operation of law, applied to that particular purpose. Hence the principle of *retainer* is by some writers referred to the maxim, *potior est conditio possidentis*. An executor *de son tort*, however, is not allowed to retain, for that would be contrary to the maxim, *nullus commodum capere potest de injuriâ suâ propriâ*.

The doctrine of *retainer*, however, does not obtain in India, and the executor is bound to pay all the debts of the deceased, including his own, equally and rateably, as far as the assets of the deceased will extend, and no creditor is to have a priority over another, by reason that his debt is secured by an instrument under seal, or on any other account (*Ind. Suc. Act X of 1865, s. 282; Prob. and Admin. Act V of 1881, s. 104*).

Quod respondeat ouster. That he answer over. See *Respondet ouster*.

Quod semel aut bis existit prætereunt legislatores. The legislature takes no notice of that which is only of occasional occurrence. See *Ad ea quæ...*

Quod semel meum est amplius meum esse non potest. That which is once mine, cannot be more fully mine.

Quod semel placuit in electionibus amplius displicere non potest. When an election is once made, it cannot be disapproved or revoked any longer. In the case of alternative obligations, an election once made is binding, and the promise is thenceforth single to perform the alternative chosen (*Hazi Abdul Rahman v. Hasanbhoy Visram*, 16 Bom. 501). When a person is called upon to elect between two things (whether properties or rights of action), and he elects or makes his choice between them with full knowledge of all the circumstances of the case, it is no longer open to him to alter his choice. Where an agreement has been procured by fraud, the party defrauded may, at his election, treat it as void, but he must make his election within a reasonable time (*Lindsay Petroleum Co. v. Hurd*, L. R. 5 P. C. 227). But the election once made by the party defrauded cannot be retracted by him (*Scarf v. Jardine*, 7 App. Cas. 360; 51 L. J. Q. B. 612). See *Electio semel facta...*

See s. 196 of the Ind. Con. Act IX of 1872, and ss. 167 to 177 of the Ind. Suc. Act X of 1865.

Quod stet prohibitio. That the prohibition stand.

Quod sub certâ formâ concessum vel reservatum est, non trahitur ad valorem seu compensationem. What is given or reserved under a certain form is not to be drawn into a valuation or compensation.

Quod subintelligitur non deest. What is understood is not wanting.

Quod tacite intelligitur deesse non videtur. What is silently understood, does not appear to be wanting. See *Quod naturaliter...*

Quod terrorem populi. For warning or admonishing the people.

Quod turpi ex causâ promissum est, non valet. A promise made for an immoral purpose is not valid. A promise founded on an illegal consideration is not binding.

Quod vanum et inutile est, lex non requirit. The law requires not what is vain and useless.

Quod vide. Which see. Used to refer a reader to the word, chapter, &c., referred to. Abbrev. *q. v.*

Quod voluit, non dixit. What he wished he has not spoken. He has not expressed his meaning. His meaning does not appear from his words.

Quo jure. By what right. A writ that lay for him in whose lands another claimed common of pasture, time out of mind, calling on the latter to show by what title he claimed.

Quo ligatur, eo dissolvitur. By the same power by which a man is bound, by that he is released. An obligation must be dissolved by the same mode as it was contracted, e.g., a deed by a deed. See *Naturale est...*

Quo minus. A writ which lay for him who had a grant of house-bote and hay-bote in another man's woods to prevent the grantor making such waste that the grantee could the less enjoy his grant. (*House-bote*, an allowance of necessary timber out of the lord's wood for the repair and support of a house. *Hay-bote*, an allowance of necessary stuff to make and repair hedges). The writ also lay for the king's farmer or debtor, where the defendant had done him the injury complained of, by reason whereof he was the less able to pay the king his rent or debt.

Quomodo. How.

Quomodo quid constituitur eodem modo dissolvitur. In the same manner by which anything is constituted by that it is dissolved. See *Naturale est...*

Quorum. Of whom. Certain individuals among persons invested with any power, or with the exercise of any jurisdiction, without whom any number of the others cannot proceed to execute the power given by the commission. The minimum number of persons necessarily present, in order that business may be proceeded with at any meeting for the despatch of business.

Quorum aliquem. Of whom one. Among the justices of the peace appointed by the king's commission, there were originally some who were more eminent for their skill and discretion than others, one, or some of whom, on special occasions, the commission expressly required should be present, and without whose presence the others could not act, and who were termed justices of the quorum from the language of the commission which ran thus *quorum aliquem vestrum, A.B., C.D., &c., unum esse volumus* (i. e., of whom we wish some one of you A.B., C.D., &c., to be present).

Quorum nomina. A writ that lay for the king's collectors and other officers liable to account to the Crown for allowing and suing out their *quietus* at their own charge, without allowance of the king.

Quota. So many as; proportion.

Quotiens idem sermo duas sententias exprimit ea potissimum accipiat, quæ rei generandæ aptior est. Whenever the same language expresses two meanings, that should be adopted which is more suited for effecting the object in view.

Quotiens in materiâ erratur nulla est venditio. An error in the substance of the thing sold, renders the sale void.

Quoties duplici jure, defertur alicui successio, repudiato novo jure, quod ante defertur supererit vetus. Whenever a succession comes to a man by a double right, the new right being laid aside, the old right which brought it first will survive.

Quoties in stipulationibus ambigua oratio est, commodissimum est id accipi quo res de qua agitur in tuto sit. Whenever there is ambiguity in the words of a stipulation, it is best to adopt the sense which places the thing in question out of danger.

Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba fienda est. When in the words there is no ambiguity, no exposition shall be made which is opposed to the express words of the instrument, *i. e.*, parol evidence to contradict or vary the clear words of a written instrument is inadmissible.

"The general rule," observes a learned judge, "I take to be, that where the words of any written instrument are free from ambiguity in themselves, and where external circumstances do not create any doubt or difficulty as to the proper application of those words to claimants under the instrument, or the subject matter to which the instrument relates, such instrument is always to be construed according to the strict plain common meaning of the words themselves; and that in such case evidence *de hors* the instrument for the purpose of explaining it according to the surmised or alleged intention of the parties to the instrument is utterly inadmissible" (*Per Tindal, C. J., Shore v. Wilson*, 5 Scott, N. R. 1037). The same rule applies to a will (*Doe v. Chichester*, 3 Taunt. 147; 4 Dow. 65; 16 R. R. 32). See *Ambiguitas verborum patens... Expressio unius...*

The maxim applies equally to the interpretation of an act of Parliament; the general rule being that *a verbis legis non est recedendum*.

Quousque. As far as; as long as; until. A seizure *quousque* by the lord of a manor on default of the heir coming in to be admitted, means a seizure *until* the heir so comes in, the lord being entitled to do this after three proclamations made at three consecutive Courts. A prohibition *quousque* is a temporary prohibition.

Quousque debitum satisfactum fuerit. Until the debt be satisfied.

Quo warranto. By what authority. A writ which lay against any person or corporation that usurped any franchise or liberty against the king without good title, and brought against the usurpers to show by what right or title they held or claimed such franchise or liberty. It was in the nature of a writ of right for the king against him who claimed or usurped any office, franchise or liberty, to enquire by what warrant or authority he supported his claim, in order to determine the right. It was also brought against one who intruded himself as heir into any land, &c. Now obsolete.

Quum principalis causa non consistit ne ea quidem quæ sequuntur locum habent. When the principal does not hold, the incidents thereof ought not to obtain. The obliga-

tion of the surety is accessory to that of the principal, and is extinguished by the release or discharge of the latter. See *Quæ accessionum...*

Quum quod ago non valet ut ago, valeat quantum valere potest. When what I do is of no force as to the purpose for which I do it, let it be of force to as great a degree as it can. See *Quando res non...*

Quum sunt paritum jura obscura, reo potius favendum est, quam auctori. When the rights of the parties are doubtful, favour must be shown to the defendant rather than the complainant. See *In æquali jure...*

R

Raison d'être. (Fr.) The object of a thing. The reason for a thing's existence.

Rapuit. He ravished. A word used in indictments for rape.

Ratificatio. Ratification.

Ratihabitio. Confirmation; agreement; consent.

Ratihabitio mandato comparatur. Ratification is equivalent to a command.

Ratihabitio mandato æquiparatur. Ratification is tantamount to a command. See *Omnis ratihabitio...*

Ratio. An account; a rule of proportion; reason.

Ratio decidendi The point in a case which determines the judgment; the ground or reason for a decision.

Ratio est formalis causa consuetudinis. Reason is the formal cause of custom.

Ratio est legis anima; mutata legis ratione, mutatur et lex. Reason is the soul of law; the reason of the law being changed, the law is also changed. See *Ubi eadem ratio...*

Ratio est radius divini luminis. Reason is a ray of the divine light.

Ratio et auctoritas duo clarissima mundi lumina. Reason and authority are the two brightest lights of the world.

Ratio justifica. The reason that justifies.

Ratio legis est anima legis. The reason of law is the soul of law.

Rationabile estoverium. Reasonable estovers or alimony.

Rationabilibus divisio. A writ that lay where two lords, in divers towns, had seignories joining together, for the rectification of their boundaries.

Rationabilis dos. Reasonable dower; a widow's third.

Rationabilis parte. See *De rationabilis...*

Ratione domicilli. By reason of domicile.

Ratione fratriagit. See *Fratriagium*.

Ratione foundationis. By reason of the founding or foundation. The builders of a new church were called its patrons *ratione foundationis*.

Ratione impotentia. On account of inability.

Ratione junctura in matrimonio. By reason of joining in marriage. Applied to a jointure, which is a settlement of land made to a woman in consideration of marriage.

Ratione privilegii. By reason of privilege.

Ratione privilegii et ratione soli. By reason of privilege and by reason of ownership of soil.

Rationes exercere. To plead.

Ratione soli. By reason of an estate in land. As the right to hold fairs may exist in a land owner, *ratione soli*, i. e., by virtue of his estate in the land, or *ratione privilegii*, i. e., by charter, letters patent, &c.

Ratione tenuræ. By reason of the tenure.

Ratione visitationis. By reason of a visit.

Ratio potest allegari deficiente legis. Sed ratio vera et legalis, et non apparens. Reason may be alleged where law is defective. But it must be true and legal reason, and not merely apparent.

Ratio ultima legum. The last reason or expedient of the law, i. e., military force.

Ravishment de garde. An abolished writ that lay for a guardian by knight's service, or in socage, against him that took from him the custody of his ward. See *Ejectione custodiæ*.

Re. In the matter of.

Rebus sic stantibus. At this point of affairs.

Receditur a placitis juris potius quam injuriæ et delicta maneat impunita. We surrender the forms of law rather than allow injuries to remain unpunished. See *Salus populi... Ubi jus...*

The maxim must be understood to apply only to those cases in which the judges are invested with a discretionary power to permit such amendments to be made, e. g., in an indictment, as may prevent justice from being defeated by mere verbal inaccuracies, or by a non-observance of certain legal technicalities; and a distinction must therefore be remarked between the "*placita*" and the "*regula*" *juris*, inasmuch as the law will rather suffer a particular offence to escape without punishment, than permit a violation of its fixed and positive rules. Courts will rather allow a defendant to escape than enforce a contract which is against public policy. See *Ex dolo malo...*

Recens insecutio. Fresh suit. This is when a man is robbed of a thing, and the party so robbed follows the fellow immediately, and apprehends and convicts him of the felony by verdict. The party shall then have his goods again.

Recens persecutio. Fresh pursuit. Instant and immediate following with intent to recapture a thing lost, as a bird or beast escaped, or goods stolen, &c.

Receptus. (Rom. L.) An arbitrator.

Recipitur in modo recipientis. Money received is to be applied according to the intention of the recipient. See *Quicquid solvitur...*

Recitatio. Recital. The making mention in a deed or writing of something which has been done before.

Recognitione adnullandâ per vim et duritiem factâ. A writ for the annulment of a recognition alleged to have been acknowledged by force and duress.

Reconventio. (Rom. L.) A counter-claim or cross action.

Recordari facias loquelam. That you cause the plaint to be recorded. A writ directed to the sheriff to remove a cause, pending in an inferior court, to the King's Bench or Common Pleas; called *recordari* because it commanded the sheriff to make a record of the plaint and other proceedings in the county court, and then to send up the cause. Abbrev. *re. fa. lo.*

Rectatus. Suspected or arraigned; accused.

Reclatus de morte hominis. Charged with the death of a man.

Rectitudo. Right or justice. A legal due, tribute, or payment.

Recto de advocatione ecclesiæ. A writ of right of advowson, which lay for a man, who, having a right of advowson, had allowed a stranger to usurp the presentation without bringing an action of *quare impedit* or *darrein presentment* within the proper time.

Recto de dote. See *Dote*.

Recto de dote unde nihil habet. See *Dote unde...*

Recto sur disclaimer. Right on disclaimer. A writ that lay where a tenant denied the title of his lord as to the land held by him (the tenant). If the lord proved that the land was holden of him, he recovered back the land for the tenant for ever.

Rectum. Right. Also a trial or accusation.

Rectum esse. To be right in Court. See *Rectus in curiâ*.

Rectum rogare. To ask for right. To petition the judge to do right.

Rectus in curiâ. Right in court. One who stands upright at the bar of a Court and no accusation is made against him, i. e., one who is neither outlawed, excommunicated or infamous. One who stands at the bar, and no man objects any offence against him. When a person outlawed hath reversed the outlawry, so that he can participate in the benefit of the law, he is said to be *rectus in curiâ*. See *Legalis homo*.

Recuperanda possessionis causâ. (Rom. L.) For the recovery of a possession which had been lost.

Recurrendum est ad extraordinarium quando non valet ordinarium. We must have recourse to what is extraordinary, when what is ordinary fails.

Recusatio judicis. (Rom. L.) A refusal of, or exception to, a judge, upon any suspicion of partiality.

Reddendo singula singulis. By giving to each that which peculiarly belongs to it. A phrase indicating that different words in one part of a deed or other instrument are to be applied respectively to their appropriate objects in another part. Thus in the sentence "If any one shall draw or load any sword or gun . . ." the word 'draw' is applied to 'sword' only, and the word 'load' to 'gun' only, because it is impossible to load a sword, or draw a gun.

Reddendum. That part of a deed of lease which reserves something to the grantor out of the estate transferred, such as rent, which anciently consisted of corn, flesh, fish and other victuals.

Redderre rationem. To give an account.

Reddidit se. He has rendered himself. Words used of a person who had surrendered himself to prison in discharges of his bail.

Redditarium. A rental of an estate or manor.

Redditum in invitum. Rendered against his judgment or will.

Redditus ad mensam. Table rents. Rents paid to bishops, &c., to be reserved and appropriated to their table or house-keeping.

Redditus cæcus et siccus. Rent uncertain and barren.

Redemptio. Redemption.

Redeundo. In returning.

Redhibitio. (*Rom. L.*) An action allowed to a buyer, by which to annul the sale of some moveable, and oblige the seller to take it back again on the ground of deceit, &c.

Reditus. A return; a rent.

Reditus albi. See *Alba firma*.

Reditus assisus. Rents of assize. Standing rents. These are certain established rents payable by free holders and ancient copyholders of a manor. Those of the freeholders are called *reditus capitales* (chief rents); and both sorts are called *quieti reditus* (quit rents), because thereby the tenant goes quit and free of other services.

Reditus capitales. Chief rents. See *Reditus assisus*.

Reditus nigri. See *Alba firma*.

Reditus quieti. Quit-rents. See *Quietus reditus*.

Reditus siccus. A rent-seck or barren rent, which is merely a rent reserved by deed, but without any clause of distress.

Reductio ad absurdum. Reducing to absurdity. The method of disproving an argument by showing that it leads to an absurd consequence.

Refertur ad universos quod publice fit per majorem partem. The public act of the majority is considered the act of all.

Regale episcoporum. The temporal rights and privileges of a bishop.

Regalem potestatem in omnibus. The royal power in all cases. See *Jura regalia*.

Regalia. Rights of the Crown. See *Jura regalia*. Also the crown, sceptre with the cross, and other jewels and ornaments used at a coronation, are called the *regalia*.

Regardant. Regarding; concerning.

Rege inconsulto. Without the king being consulted. A writ which issued from the king to the judges, bidding them not to proceed in a cause which might prejudice the king, without the king being advised. See *Non procedendo*...

Reges dicuntur clerici. Kings are called clerks. See *Rex est persona sacra*...

Reges ex nobilitate, duces ex virtute sumunt. Kings claim their title from nobleness of birth, dukes from deeds of valour.

Regia dignitas est indivisibilis et qualibet alia derivativa dignitas est similiter indivisibilis. The kingly power is indivisible, and every other derivative power is similarly indivisible.

Regia camera. Chambers of the king. The havens or ports of the kingdom were so called in ancient records.

Regiam majestatem. The king's majesty.

Regio assensu. A writ whereby the king gives his royal assent to the election of a bishop or abbot.

Regis ad exemplum totus componitur orbis. The whole earth is ruled after the example of a king.

Registrum brevium. A register of writs.

Regium donum. A royal grant.

Regium munus. The duty which the king owes to his subjects in return for their subjection and allegiance to him.

Regius assensus. The royal assent to the election of a bishop.

Regnum ecclesiasticum. The ecclesiastical kingdom. In some countries, formerly, the clergy held there was a double supreme power or two kingdoms in every kingdom; the one a *Regnum ecclesiasticum*, absolute and independent of any but the Pope over ecclesiastical men and causes, exempt from the secular magistrate; and the other a *Regnum seculare* of the king or civil magistrate, which had subordination and subjection to the ecclesiastical kingdom. But these usurpations were exterminated in England by Henry the VIII.

Regnum non est divisibile. A kingdom is not divisible.

Regnum seculare. See *Regnum ecclesiasticum*.

Regulæ generales. General rules. Abbrev. *Reg. gen.*, or *R. G.*

Regula juris. Rules of law. See *Receditur a placitis*...

Regula est, juris quidem ignorantiam cuique nocere, facti vero ignorantiam non nocere. It is a rule, every one is prejudiced by his ignorance of law, but not by his ignorance of fact. See *Ignorantia facti*...

Regula est quæ rem quæ est brevitur enarrat. That is a rule which concisely states the natural doctrine of the case.

Regula ex jure, non jus ex regula sumitur. The practice is taken from the law, not the law from the practice.

Regulariter non valet pactum de re meâ non alienandâ. It is a rule that a compact not to alienate my property is not binding.

Rehabere facias seisinam. A writ directed to the sheriff, who had, under a writ of *habere facias seisinam*, delivered seisin to a man of more land than was his due, requiring him to restore the excess.

Rehabilitatio. A restoring to former ability. Applied to the power of Pope by his bull for re-enabling a spiritual person to exercise his function who had been disabled.

Rei solvendæ. Discharging the obligation by which a man is bound.

Relatio est fictio juris et intenta ad unum. Relation is a fiction of law, and is intent to one point. See *In fictione juris*...

Relator. A rehearser or teller. Applied to an informer.

Relaxatio. Release. The gift or discharge of a right of action, which any one has against another, or his land.

Relegatio. A banishing or sending away.

Relictâ verificatione. His verification being abandoned. Where a judgment is confessed by *cognovit actionem*, after plea pleaded, and the plea is withdrawn by the defendant, it is called a confession, or *cognovit actionem relictâ verificatione*, he confessed plaintiff's claim, having abandoned his plea.

Religiosæ domus. A religious house, set apart for pious uses, such as a monastery, church, hospital, &c.

Remanentia. Remainder. An estate limited in lands, tenements or rents, to be enjoyed after the expiration of another particular estate.

Remanent, pro defectu emptorum. They remain (unsold) for want of buyers. A sheriff's return to a writ of *fi. fa.*

Remanet. It remains; postponing a trial.

Rem in bonis nostris habere intelligimur, quoties ad recuperandum eam actionem habeamus. We are understood to have an interest in our goods, as often as we bring an action to recover that thing.

Remise de la dette. (Fr.) The release of a debt.

Remissius imperanti melius paretur. A man commanding not too strictly, is better obeyed.

Remittitur. When judgment was given in a superior Court on a writ of error, or the writ of error abated or was discontinued, the transcript of the record was sent back to the Court below, and the entry of this circumstance was called a *remittitur*.

Remittitur damnum. The damage is remitted. An entry on the record by a plaintiff who

either is given by the jury greater damages than he has declared for, or is willing to give up some part.

Remittitur de damnis. It is remitted in damages; the punishment is remitted.

Remoto impedimento, emergit actio. An impediment being removed, an action emerges.

Rem tantam tam negligenter. So serious a matter, so negligently.

Rente viagère (Fr.) A life annuity.

Reparatione faciendâ. An ancient writ which lay in many cases to compel the repairs of a house fallen into decay; as, for instance, when there are several tenants in common of a house falling out of repair, and some are willing to repair, but the others are not.

Repetitum narium. *Vetitum narium.* A second or reciprocal distress in lieu of the first, which was eloigned, the goods being removed out of jurisdiction.

Repetundarum crimen. The crime of receiving a bribe to prevent justice.

Replegiare. To redeem a thing detained or taken by another, by putting in legal sureties.

Replegiari de averiis. A writ for the replevy of live cattle unjustly distrained.

Replegiari facias. A writ of replevin commanding the sheriff to deliver a thing taken in distress to the owner, and afterwards to do justice in respect of the matter in dispute.

Replevium. Relief.

Replicatio. Replication.

Repositorium. A storehouse or place wherein things are kept; a warehouse.

Reprendre. To relieve; to take back.

Reprisalia. The taking of one thing in satisfaction of another. See *Arresto facto*...

Reprobata pecunia liberat solventem. Money refused, frees the debtor. See *Omne majus*...

Republicæ interest, voluntates defunctorum effectum sortiri. It concerns the state that the wills of the dead should have their effect.

Requiem. A mass or hymn sung for the peace of departed souls.

Rerum ordo confunditur, si unicuique jurisdictio non servetur. The order of things is confounded if every one preserve not his own jurisdiction.

Rerum progressus ostendunt multa, quæ in initio præcaveri seu prævideri non possunt. The progress of events show many things which, at the beginning, could not be guarded against or foreseen. Many mischiefs arise on the change of a law, which those who altered it could not see when they made the change.

Rerum suarum quilibet est moderator et arbiter. Everyone is the moderator and arbiter of his own affairs.

Res. A word of the most general and extensive signification denoting anything that may be thought, done or spoken of. A thing; a something; a matter; affair; event; circumstance; case.

Res accessoria. See *Res principalis*.

Res accessoria sequitur rem principalem. An accessory follows the principal thing. See *Accessorium non...*

Res communis. Such things as are common.

Rescriptum principis contra jus non valet. The prince's rescript (decree or order) avails not against law.

Res est misera ubi lex vagum et incertum. Miserable is the state of things, where the law is vague and uncertain.

Res extra commercium humanum. Things which cannot be the subject of property.

Res extra patrimonium. Things incapable of exclusive possession.

Res fungibiles. See *Fungibiles...*

Res gestæ. The facts of a transaction. The gist of the thing. The material facts of a case, as opposed to mere hearsay. Things done or spoken in the course of a transaction of which proof may be received, as the words used at seditious meetings, to show the objects and character of such meetings; the cries of a woman, who is being ravished, to show that the transaction took place against her will. See *Res inter alios acta...*

Residuum. Remainder. The residue of the personal estate of a deceased person after payment of debts and specific pecuniary legacies.

Resignatio est juris proprii spontanea refutatio. Resignation is a spontaneous relinquishment of one's own right.

Res incognitæ. Things or matters that are unknown.

Res integra. An entire thing. An affair not broached or meddled with. A point not covered by the authority of a decided case, so that a judge may decide it upon principle alone.

Res inter alios acta alteri nocere non debet. Things done between strangers ought not to injure a party. A matter litigated between two parties ought not to prejudice a third party.

The effect of this maxim is to prevent a litigant party from being concluded, or even affected, by the acts, conduct or declarations of strangers; for it would not only be highly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorised strangers; so that, in general, no declaration, written entry, or affidavit made by a stranger is evidence against a man; nor can a person be affected by any evidence, decree, or judgment to which he was not actually or in contemplation of law, privy. The sworn evidence of a witness in one cause cannot be made available in another cause between other parties.

A transaction between two parties in judicial proceedings ought not to be binding upon a third; for it would be unjust to bind any person who could not be admitted to make a defence or to examine witnesses, or to appeal from a judgment, which he might think erroneous, and, therefore, the depositions of witnesses in another cause in proof of a fact, the verdict of a jury finding the fact, and the judgment of the Court upon facts found, although evidence against the parties and all claiming under them, are not, in general, to be used to the prejudice of strangers (*Duchess of Kingston's Case*, 11 Howell St. Tr. 261; 2 Sm. L. C., 16th Edn., 718). For other points decided in this case, see *Nemo debet bis vexari...*

To the general principle that a judgment is binding only as between the same parties and their privies, judgments *in rem* form an exception; for by a judgment *in rem* the subject matter adjudicated upon is rendered, *ipso facto*, such as it is thereby declared to be, and the judgment therefore is of effect as between all persons whatever. For example, a final judgment, order or decree of a competent Court in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, is conclusive against all the world (*Allen v. Dundas* 3 T. R. 129; 1 R. R. 666; *Castrique v. Imrie*, 9 C. B. N. S. 405; L. R. 4 H. L. 414; *Ind. Evi. Act I of 1872*, s. 41). Judgments, order, or decrees, other than those mentioned above, are relevant, if they relate to matters of a public nature relevant to the inquiry, but they are not conclusive proof of that which they state (*Ibid.*, s. 42). But any party to a suit may show that the judgment which has been proved by the adverse party was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion (*Ibid.*, s. 44).

Hearsay evidence is not generally admissible in a case, the law requiring all evidence to be given under formal responsibility, *i. e.*, upon the direct testimony of a witness in open Court (*Ind. Evi. Act I of 1872*, s. 60), subject to the penalties with which perjury is attended; and a statement made, whether orally or in writing, by a person not called as a witness, is not admissible in evidence, except in certain exceptional cases. For such exceptions see ss. 32 to 39 of the *Ind. Evi. Act I of 1872*. See *Testis de auditu...*

The doctrine of *res gestæ* may here be mentioned as qualifying this maxim and also the rule excluding hearsay evidence. Where any facts are proper evidence upon an issue, all oral or written declarations which can explain such facts may be received in evidence (*Doe v. Tatham*, 7 A. & E. 313). Where declarations accompany an act, they are frequently admissible in evidence as part of the *res gestæ*, or as the best and most proximate evidence of the nature and quality of the act, their connection with which either sanctions them as direct evidence or constitutes them in-

direct evidence from which the real motive of the actor may be duly estimated (*Ford v. Elliot*, 4 Exch. 78; *per* Pollock, C. B., *Milne v. Leister*, 7 H. & N. 796). See ss. 9 to 16 of the Ind. Evi. Act I of 1872.

A recital in a deed or other instrument is in some cases conclusive, and in all cases evidence as against the party who makes it; and it is of more or less weight, or more or less conclusive against them according to circumstances. But it is no more evidence as against third persons than any other statement would be (*Brajeshware Peshakar v. Budhanudi*, 6 Cal. 268; 7 C. L. R. 9; *Sikher Chund v. Dulputty Singh*, 5 Cal. 363; 5 C. L. R. 374).

Statements made by a Hindu father in deeds to which the sons were not parties, that he and his sons were in union, are not evidence against the sons in a suit in which the point at issue is whether or not the father and sons were separate (*Ravji v. Shahajiram*, P. J., 1875, p. 171).

The result of a suit in which a *thikan* was allotted to the plaintiff as against the defendant cannot bind a mortgagee of the defendant whose mortgage is prior to that suit (*Vishnu v. Anant*, P. J., 1885, p. 238).

A decree collusively obtained can be declared as not binding on a third party at his instance, but it should not be set aside as between the parties to it who do not apply (*Sayad Amin v. Sayad Moshasa*, P. J., 1895, p. 101).

A decree between different parties is not admissible in evidence (*Balshet v. Pandu*, P. J., 1886, p. 284).

The conviction of a bailee for misappropriation of the property bailed to him, is no evidence of the title of the bailor in a suit by him to recover the property from a person to whom the bailee had transferred it (*Ramial v. Campbell*, P. J., 1875, p. 319).

The deposition in certain proceedings to which the plaintiff and first defendant were, but the second defendant was not, a party, is not admissible in evidence (*Daji v. Raghunath*, P. J., 1887, p. 344).

Res inter alios judicata. Matters decided between strangers. See *Res inter alios acta*...

Res inter alios judicata nullem inter alios prejudicium facit. Matters decided between third parties do not affect strangers or any but themselves. See *Res inter alios acta*... *Inter partes*.

Res ipsa loquitur. The thing speaks for itself, i. e., no proof is required.

Res judicata. A matter decided. A point already decided by authority.

No Court shall try any suit or issue in which the matter directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court of jurisdiction compe-

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tent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court (*Code of Civ. Pro. XIV of 1882*, s. 13).

Res judicata pro veritate accipitur. A thing adjudicated is received as true. A judgment or verdict, even though erroneous, is accepted for the truth, and estops the parties and their privies until it is set aside or quashed. The *res judicata* is in fact the result of the definitive sentence or decree of the Court, and is binding upon and generally unimpeachable by, the litigating parties. This is expressed by the present maxim. But the maxim applies only when the same question as had already been judicially decided is again raised between the same parties. See the *Code of Civ. Pro. XIV of 1882*, ss. 13 and 14.

See *Nemo debet bis vexari*...

Res mancipi (*Rom. L.*). A thing which might be sold and alienated.

Res nova Something new. A matter not yet decided.

Res noviter. Something new; new evidence.

Res nullius. The property of no one. A Hindu, who upon the death of a relative, dedicates or lets loose a bull, in accordance with Hindu religious usage as a pious act for the benefit of the soul of the deceased, thereby surrenders and abandons all proprietary rights in the animal. It is therefore *res nullius*, or *nullius proprietatis*, and cannot be the subject of theft, criminal misappropriation or mischief (*Romesh Chunder v. Hiru*, 17 Cal. 852; *Queen-Empress v. Bandhu*, 8 All 51; *Queen-Empress v. Nihal*, 9 All. 348). But see *Queen-Empress v. Naila* (11 Mad. 145).

Res nullius fit primi occupantis. A thing abandoned becomes the property of him who gets first possession of it. *Qui prior est tempore*... *Res Nullius*.

Resolutio jure concedentis resolvitur jus concessum. The grant of any right comes to an end on the termination of the rights of the grantor. See *Derivativa potestas*... *Assignatus utilis*...

Respectu computi vicecomitis habendo. An old writ for the respiting of a sheriff's account upon just occasion directed to the Treasurer and Barons of the Exchequer.

Respectus. Respite; delay; forbearance; continuation of time.

Respectus homagii. The forbearance or delay of homage, which ought to be performed by tenants holding by homage, &c.

Res perit (suo) domino. A thing lost to its owner. The loss falls on the owner. When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury (*Ind. Con. Act IX of 1872*, s. 86).

Res per pecuniam aestimatur, et non pecunia per res. The value of a thing is estimated

according to its worth in money, but the value of money is not estimated by reference to the thing.

Respiciendum est judicanti, ne quid aut durius aut remissius constituitur quam causa deposcit; nec enim aut severitatis aut clementia gloria affectanda est. It is a matter of import to one adjudicating that nothing either more severe or more lenient than the cause itself warrants should be done; he must not seek renown either as a severe or a tender hearted judge. The judge must see that no order be made, or judgment given, or sentence passed, either more harshly or more mildly than the case requires.

Respondeat ouster. Let him answer over; *i. e.* when a dilatory plea put in by the defendant has been overruled by the Court, let him put in a more substantial plea, or answer over in some better manner.

Respondeat superior. Let the principal answer.

The doctrine is more usually and appropriately applied to actions *ex delicto*, than to such as are founded on contract. The doctrine applicable to contracts is *qui facit per alium facit per se*.

The general rule is, that the principal is liable civilly (and, in some cases, criminally) for the frauds, torts negligences, malfeasances and omissions of his agent, when done *in the course of his employment*, though not sanctioned, but even forbidden by the principal. The rule applies, *let the superior answer for it*, for he holds out his agent as competent, and so warrants his fidelity, skill, and good conduct in all matters within the scope of his agency. But if the act was not done in the course of his employment, but while the servant or agent was solely engaged upon *some purpose of his own*, or if the act was simply *wilful or malicious* on his part, or *beyond the scope of his authority*, express or implied, the master is not answerable (*General Omnibus Co. v. Limpus*, 9 Jur. N. S. 323). It is a question of fact whether a particular act is within the scope of the employment, though not in the ordinary course of it (*Burns v. Poulson*, L. R. 8 C. P. 567).

Hence the other general rule, that a servant or agent is not liable to others, but only to his master, for the consequences of *non-feasance* or *wrongful omissions*; the master alone is liable for such. But for *malfeasances* or *positive wrongs*, the servant or agent may also be made liable to others (*Parry v Smith*, 4 C. P. D. 327). Thus, if the servant of a blacksmith in shoeing a horse, from negligence, lames him, the master alone is liable, viewing this as a mere *non-feasance* as some do; but if he did it *maliciously*, an action will be personally against the servant. When one employs another to do an act which may be done in a lawful manner without injury to others, and the

latter unnecessarily does it so as to cause damage to a third person, the employer will not be responsible, unless there is the relation of master and servant between them.

Generally, where the act was that of a sub-agent employed by the authority of the principal, the latter alone is liable. An exception is the master of a ship, who, from the necessities of commerce is treated as a qualified owner, and is responsible for the acts or omissions of his crew done in the course of their employment.

The above general rules as to torts done by agents in the course of their agency or employ, are not applied to public agents. The State is not liable for their misfeasances or non-feasances, for it cannot guarantee the fidelity of its agents (See the maxim *Rex non potest peccare*). So, the head of a department, where he has not authorised or co-operated in their acts, is not liable for his subordinates, unless he has been guilty of negligence in selecting or superintending them; for, otherwise, who could safely serve the state? Generally, also, his power of appointing and dismissing subordinates is limited. The same rule is extended in favour of others not strictly public agents, but acting gratuitously for public purposes, as road or municipal commissioners. So, officers in the army or navy are liable only for their own acts and negligences. A captain is not liable for the damage from a collision where a lieutenant had the watch, and the captain was not upon deck, nor called there by his duty. He did not appoint his lieutenant, and is obliged to serve in any ship with any crew as ordered.

Another question often calling for decision is, whether the relation of 'master and servant' exists between the party sought to be made liable and the actual wrong-doer. The point for inquiry is, who had the selection of the person causing the damage, and under whose orders and efficient control was he when it was caused? If A buys a pair of horses for his carriage from B, and B sends also the driver, then B, and not A, is liable for the negligence or want of skill of the driver resulting in damage to others. But if A takes upon himself to give any special directions to the driver, or interferes so as to take the actual management of the horses into his own hands, A becomes responsible (*Laragher v. Pointer*, 5 B. & C. 547; *Quarman v. Burnett*, 6 M. & W. 499).

The employer is responsible for the acts of his servant, whether the act is done by a domestic servant, or day labourer, or by a person who works by the job or piece, and contracts to do the work for a specific sum, provided always that the workman is an ordinary labourer *personally* engaged in the execution of the work, acting under the control of the employer, and not a con-

tractor exercising an independent employment, and selecting his own servants and workmen for the performance of the work (*Holmes v. Onion*, 26 L. J. C. P. 263; *Sadler v. Henlock*, 4 E. & B. 578).—*Collett on Torts*, 6th Edn., pp. 85 to 98.

It may be remarked that in some of the British colonies actions against the Government in respect of tortious acts have been authorized by ordinance or colonial legislation. As for India, st. 21 & 22 Vic. c. 106, s. 65, enacts that the Secretary of State in Council for India shall and may be sued as well in India as in England by the name of the Secretary of State in Council as a body corporate; and the property and effects vested in her Majesty for the purpose of the Government of India or acquired for the said purposes shall be subject and liable to judgment and execution. For procedure in such cases see ss. 416 to 429 of the Code of Civ. Pro. XIV of 1832.

The Secretary of State in Council of India is liable for the damages occasioned by the negligence of servants in the service of Government if the negligence is such as would render an ordinary employer liable (*Peninsular and Oriental S. N. Co. v. Secretary of State*, 5 Bom. H. C., Ap., 1).

Where damages were sustained by reason of negligence in the carriage of goods by the Government Bullock Train, the Secretary of State was held liable (*Deputy Post-Master of Bareilly v. Earle*, 3 N.-W. P. 195). But held in *Winter v. Way* (1 Mad. H. C. R. 200) that the Indian Government, like the Post Master General, is not responsible for loss or damage occurring to anything entrusted to the Post Office for conveyance.

The acts of a Government officer affect the Government only when he is acting in the discharge of a certain duty within the limits of his authority, or if he exceed that authority, when the Government in fact or in law, directly or by implication, ratifies the excess (*Collector of Masulipatam v. Cavalry Venkata Narainapah*, 8 Moo. I. A. 529; 3 W. R. P. C. 61; 1 Suth. P. C. 476).

One cannot employ another to do an act which is unlawful. In such case both the parties are liable. A policeman who stands by, acquiescing in an assault on a prisoner committed by another policeman for the purpose of extorting a confession, is guilty of abetment of an offence under s. 330 of the Ind. P. C. Nothing but fear of instant death is a defence for a policeman who tortures any one by order of a superior. The maxim *respondet superior* has no application in such a case (*Queen-Empress v. Latifkhan*, 20 Bom. 394).

The servant of the defendant who stayed in the plaintiff's hotel, broke a filter the property of the plaintiff. It appeared that

the servant when he broke the filter, was not acting within the scope of his employment nor on the defendant's business or for his benefit. Held, that the defendant was not liable for the act of his servant (*Gray v. Fiddian*, 15 Mad. 73).

The arrangement between the defendant, proprietor of a buggy, and the driver was that the driver should be entrusted with the buggy and the use of two horses for the day to be used entirely at the driver's discretion for the purpose of plying for hire. The driver was to pay three rupees a day for the use of the buggy and horses. All that he made above that sum was his perquisite for his labour, and any deficiency he had to make good. Held that the relation between the proprietor and the driver of the buggy was that of master and servant, and that the proprietor was liable for the driver's negligence (*Bombay Tramway Co. Ltd. v. Khairaj Tejpal*, 7 Bom. 119).

When one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise to indemnify him against the consequences of that act (*Ind. Con. Act IX* of 1872, s. 224).

Respondentia. Things answerable or responsible; assurance on bottomry. A loan upon the security of the goods and merchandise in a vessel.

Respondere non debet. He ought not to answer.

Respondra a touts, mes nul respondra a luy. He shall answer to all, but no one shall make answer to him.

Responsa prudentum. The opinions and decisions of experienced lawyers forming part of the Roman Laws.

Res principalis. A principal thing, which can subsist by itself and does not exist for the sake of any other thing. All that belongs to a principal thing, or is in connection with it is called an accessory thing (*res accessoria*). See *Accessorium non...*

Respublica. A commonwealth.

Res singulares. Particular things.

Res sua nemini servit. None can have a servitude over his own property.

Restitutio. Restitution. The restoring anything unjustly taken from another.

Restitutio in integrum. A restoration to the original position. The rescinding of a contract or transaction on the ground of fraud &c., so as to restore the parties to their original position.

Restitutio extracti ab ecclesia. A writ to restore a man to the church, which he had recovered for his sanctuary, being suspected of felony.

Restitutio temporalium. A writ directed to the sheriff to restore the temporalities of a bishop elected and confirmed.

Retinendæ possessionis causâ. (Rom. L.) For the protection or retention of an existing and continuing possession.

Retinere animo possessionem possumus apisci, non possumus. We can retain possession by intention alone but cannot obtain it without a corporal act also.

Retorna brevium. The returns of writs.

Retour sans protêt. (Fr.) Return without protest. A request or direction by a drawer of a bill of exchange that in case the bill should be dishonoured by the drawee it be returned without protest and without expense (*sans frais*). The effect of such a request is to disable the drawer of the bill from resisting payment of the bill on the ground that it has not been protested.

Retrazit. He has withdrawn. An open and voluntary renunciation of his suit by the plaintiff in court.

Reus. A defendant, as contrasted with *actor*, a plaintiff.

Reus in exceptione actor est. A defendant relying on an exception is in the position of a plaintiff, *i.e.*, if the defendant relies on an exception, he is to prove it. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the cause within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any part of the same Code, or any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances (*Ind. Evi. Act I of 1872, s. 105; In re Shibco Proshad Pandah, 4 Cal. 124; 3 C. L. R. 122*). Similarly, where a defendant, instead of denying what is alleged against him, relies on some new matter, the burden of proving such new matter lies on him, and all the rules laid down for the plaintiff affect equally the defendant with respect to such special pleas advanced by him.

Reus læsæ majestatis punitur ut pereat unus ne pereant omnes. A traitor is punished that one and not all may perish.

Reus promittendi. See *Reus stipulandi*.

Reus stipulandi. The party to a stipulation is so called if he is the creditor or obligee, and the debtor or obligor of such a stipulation is called the *reus promittendi*.

Reversio terræ est tanquam terra revertens in possessione donatori, sive hæredibus suis post donum finitum. A reversion of land is, as it were, the return of the land to the possession of the donor or his heirs after the termination of the estate granted. If A the owner of land grants it to B for life or for a term of years, the land will come back to A or his heirs on the death of B or on the expiration of the term. This is a reversion of the land to A.

Revertendi animum videntur desinere habere tunc, cum revertendi consuetudinem deseruerint. The disposition to return seems to

cease, when they leave off the custom of returning. See *Animalia fera, si facta...*

Revocatur. It is re-called.

Rexatria communis. A common scold.

Rex datur propter regnum, non regnum propter regem. A king is given to serve the kingdom, not the kingdom to serve the king.

Rex debet esse sub lege, quia lex facit regem. The king should be subject to the law, because the law creates the king. See *Rex non debet esse...*

Rex est caput et salus reipublicæ. The king is the head and safety (guardian) of the commonwealth.

Rex est legalis et politicus. The king is both a legal and politic person.

Rex est lex vivens. The king is the living law.

Rex est major singulis, minor universis. The king is greater than any single person,—less than all.

Rex est monarcha et imperator in regno suo. The king is monarch and emperor in his own kingdom.

Rex est persona sacra et mixta cum sacerdote. The king is a sacred person and mixed with the priesthood.

Rex hoc solum non potest facere quod non potest injustè agere. This alone the king cannot do—that he cannot act unjustly. The king can do everything but an injustice.

Rex in regno suo non habet parem. The king has no equal in his own kingdom.

Rex non debet esse sub homine, sed sub Deo et sub lege; quia lex facit regem. The king ought to be under no man; but he is under God and the law; for the law makes the king.

The maxim refers to the sovereign's pre-eminence. Besides being under subjection to God and the laws, the sovereign is subject to no others. He is the head of the commonwealth and is the source of all Municipal laws framed by Parliament and other Legislative bodies.

The person of the king, it has been said, is made up of two bodies; a natural body, subject to infancy, infirmity, sickness, and death; and a political body, perfect, powerful and perpetual. These two bodies are inseparably united together, so that they may be distinguished but cannot be divided. He is more often regarded in his political than in his individual and natural capacity. As conservator of the public peace, the Crown in any criminal proceeding represents the community at large, prosecutes for the offences committed against the public, and can alone exercise the prerogative of pardoning. As the fountain of justice no Court can have compulsory jurisdiction over the sovereign.

Rex non debet judicare sed secundum legem. The king ought not to judge but according

to law. The king ought to judge only according to law.

Rex non potest fallere, nec falli. The king is not able to deceive, nor be deceived.

Rex non potest peccare. The king can do no wrong.

The maxim must not be understood to mean that the king is above the laws, in the unconfined sense of these words, and that everything he does is of course just and lawful. Its true meaning is, first, that the sovereign individually and personally, and in his natural capacity, is independent of, and is not amenable to any other earthly power or jurisdiction; and that anything amiss in the condition of public affairs is not to be imputed to the king so as to render him personally answerable for it to his people. Secondly, the maxim means that the prerogative of the Crown extends not to do any injury, because being created for the benefit of the people, it cannot be exerted to their prejudice; and it is therefore, a fundamental general rule that the king cannot sanction an act forbidden by law; so that from this point of view, he is under, and not above, the laws, and is bound by them equally with his subjects. If, then, the sovereign personally commands an unlawful act to be done, the offence of the instrument is not thereby indemnified; for the king is not himself under the coercive power of the law, yet in many cases his commands are under the directive power of the law, which makes the act itself invalid if unlawful, and so renders the instrument of execution thereof obnoxious to punishment. See *Eodem mens præsumitur*...

Although a petition of right does not lie for a tort committed by servants of the Crown yet the servants who commit it, whether spontaneously or by order of a superior power, are answerable therefor in an ordinary action; for the civil irresponsibility of the supreme power for tortious acts could not be maintained with any show of justice if its agents were not personally responsible (*Rogers v. Rajendro Dutt*, 13 Moo. P. C. 236; 8 Moo. L. A. 108; 1 Suth. P. C. 413), and that a servant of the Crown is liable to the subject for a trespass done even with the sanction of the highest authority of the State rests on principles which are too well settled to admit of question, and which are alike essential to uphold the dignity of the Crown on the one hand, and the rights and liberties of the subject on the other (*Per curiam*, *Feather v. The Queen*, 6 B. & S. 257; 30 L. J. Q. B. 200). See on this subject *Respondet superior*.

The maxims *qui facit per alium facit per se* and *respondet superior* have no application where the servants of the Crown commit a tort; what the sovereign does personally, the law presumes will not be wrong; what he does by command to his servants, cannot be wrong in him, for if the

command be unlawful, it is in law no command, and the servant is responsible for the unlawful act, the same as if there had been no command (16 C. B. N. S. 354; *Viscount Canterbury v. The Queen*, 1 Phill. 321).

Rex nunquam moritur. The king never dies.

The law ascribes to the king, in his political capacity, an absolute immortality, and immediately upon the decease of the reigning prince in his natural capacity, the king's dignity and the prerogatives and political capacities of the supreme magistrate, by act of law and without any interregnum or interval, vest at once in his successor, who is, *eo instante*, king to all intents and purposes; and this is in accordance with the maxim *In Angliæ non est interregnum*. The demise is immediately followed by the succession; there is no interval; the sovereign always exists, the person only is changed (*Viscount Canterbury v. Attorney General*, 1 Phill. 322).

So tender, indeed, is the law, of supposing even a possibility of the death of the sovereign, that his natural dissolution is generally called his demise—*demissio regis vel coronæ*—an expression which signifies merely a transfer of property; and when we speak of the demise of the Crown, we mean only that, in consequence of the disunion of the king's natural body from his body politic, the kingdom is transferred to his successor, and so the royal dignity remains perpetual.

On this principle no king can be a minor, and any laws or grants made by a king even if he be a minor in his natural capacity are binding on himself and his successors.

Rex prosequi in judicio potest in quâ curiâ sibi visum fuerit. The king can proceed to judgment in whatever Court he pleases. As a dispenser of law and equity, the king is deemed to be present in all his Courts.

Rex quod est injustum facere non potest. The king cannot do what is unjust. See *Rex non potest peccare*.

Rex semper præsumitur attendere ardua regni pro bono publico omnium. The king is always presumed to attend to the business of the realm for the good of all. See *Nullum tempus*...

Rex tuetur legem et lex tuetur jus. The king protects law, and the law protects right.

Riens arrear. A plea formerly used to an action of debt upon arrears of account, whereby the defendant alleged that there was nothing in arrear.

Riens passe per le fait. Nothing passes by the deed. An exception taken in some cases to an action on a deed. Now obsolete.

Rie s per descent. Nothing by descent. A plea by an heir, sued in respect of liability incurred by his ancestor, that he has no

lands descended to him wherewith to satisfy the plaintiff's demand.

Rogatio legis. (Rom. L.) See *Legem rogare*.

Rogationes, questiones, et positiones, debent esse simplices. Demands, questions and claims ought to be simple.

Rogatio testium. (Rom. L.) Bidding persons present to be witnesses to a nuncupative will.

Role d'équipage. (Fr.) The list of a ship's crew: a muster roll. A register of a ship's crew.

Rotuli clausi. Clause (or close) rolls. Royal letters under the Great Seal, addressed to particular persons for particular purposes, which not being intended for public inspection, are closed and sealed and recorded in the close rolls; hence their name.

Rotulus curiæ. Roll of court. The court-roll of a manor, wherein the business of a court, the admissions, surrenders, names, rents and services of the tenants are copied and enrolled.

Roy est l'original de tous franchises. The king is the original of all franchises.

Roy n'est lié par aucun statute, si il ne soit expressment nosme. The king is not bound by any statute unless expressly named. See *Jura regis specialia*...

The general rule is that the Crown is never bound by a statutory enactment unless the intention of the legislature to bind the Crown is clear and unmistakable (*Per Lindley, L. J., Wheaton v. Maple & Co.*, 1893, 3 Ch. 64; 62 L. J. Ch. 963); for it is inferred, *prima facie*, that the law made by the Crown, with the assent of the Lords and the Commons, is made for subjects, and not for the Crown (*Per Alderson, B., Attorney General v. Donaldson*, 10 M. & W. 124).

Though, where the king has any prerogative, estate, right, title or interest, he shall not be barred of them by the general words of an act, if he be not named therein (*Magdalen College Case*, 11 Rep. 74 b), yet, if a statute be intended to give a remedy against a wrong, the king though not named shall be bound by it (*Willion v. Berkley*, Plowd. 289); and the king is impliedly bound by statutes passed for the public good, the preservation of public rights, and the suppression of public wrongs. And the king may likewise take the benefit of any particular Act, though he be not especially named therein (*R. v. Wright*, 1 A. & E. 447).

The rule of construction according to which the Crown is not affected by a statute unless specially named in it, applies to India. *Semble*.—The provisions of s. 26 of the Limitation Act (XV of 1877) do not apply to the Crown. The mere mention of the Crown in an Act has not the effect of making all its provisions applicable to the Crown, and s. 26 does not relate to the limitation of suits, but to an entirely

different matter, *viz.*, the creation of rights by enjoyment of them, which is a branch of the substantive law. The section is clearly in prejudice of the Crown's rights, and the other provisions of the Act do not afford sufficient evidence of an intention that this section should apply to the Crown (*Secretary of State for India v. Mathurabhai*, 14 Bom. 213).

The acts of state of which the Municipal Courts of British India are debarred from taking cognizance are acts done in the exercise of sovereign powers which do not profess to be justified by municipal law (*East India Company v. Kamachee Boye*, 1 Suth. P. C. 373). But where an act complained of is professedly done under the sanction of municipal law, and in the exercise of powers conferred by that law, the fact that it is done by the sovereign power and is not an act which could possibly be done by a private individual, does not oust the jurisdiction of the Civil Courts (*Secretary of State v. Hari Bhanji*, 5 Mad. 273, dissenting from *Nobin Chunder Dey v. Secretary of State*, 1 Cal. 11; *per Stuart, C. J., Kishen Chand v. Secretary of State*, 3 All. 829).

The Crown is not expressly or by implication bound by the Indian Companies Act X of 1866 (see now Act VI of 1882), and as an order made under that Act for the winding up of a company does not work any alteration of property, such an order does not enable the Court to stay the execution of a judgment-debt due to the Crown or to the Secretary of State in Council for India (*Secretary of State v. Bombay Landing and Shipping Co.*, 5 Bom. H. C. A. C. 23). See *Quando jus domini*...

Roy pent dispenser sur malum prohibitum, mais non malum per se. The king can grant a dispensation for a *malum prohibitum*, but not for a *malum per se*.

Ruse de guerre. A trick in war; a stratagem.

Rustici. The churls, clowns, and inferior country tenants who held lands by the services of ploughing and other agricultural labours for the lord.

Ruta casa. (Rom. L.) Things dug up (*ruta*) and things cut down (*casa*). Unless they were expressly included, they were not deemed to pass with the land sold.

S

Saccularii. Cutpurses; those who privately steal from a man's purse, as by picking his pocket.

Sacculus cum brochia. A service or tenure of finding a sack and a broach (pitcher) to the king, for the use of his army.

Sacerdotes a regibus honorandi sunt, non judicandi. Priests are to be honoured by kings, not to be judged by them.

Sacramentum decisionis. Decisive oath. Under the Roman Law, where one of the parties to

to a suit was not able to prove his charge he offered to refer the decision to the oath of his adversary. The adversary was bound to accept it, or to tender the same proposal back again; otherwise he was deemed to have confessed the whole.

Sacramentum habet in se tres comites, veritatem, justitiam, et iudicium; veritas habenda est in jurato, justitia et iudicium in iudice. An oath has in it three component parts, truth, justice, and judgment; truth is requisite in the party swearing, justice and judgment in the judge administering the oath.

Sacramentum si fatuum fuerit, licet falsum, tamen non committit perjurium. A foolish oath, though false, makes not perjury.

Sæpenumero ubi proprietas verborum attenditur sensus veritatis amittitur. Many a time where the propriety of words is attended to, the meaning of truth is lost.

Sæpe viatorem nova non vetus, orbita fallit. A new road, not an old one, often deceives the traveller.

Sævitia. Cruelty; harshness; violence; severity.

Saisie-arret. (Fr.) An attachment of property in the possession of a third person.

Salus populi est suprema lex. The safety of the people is the supreme law. Regard for the public welfare is the highest law. The main end of every government should be the well being of the people, the establishment of order and security, and the diffusion of social happiness.

The maxim is based on the implied assent of every member of society, that his own individual welfare shall, in cases of necessity, yield to that of the community. Every man, when he enters into society, gives up, says Blackstone, a part of his natural liberty in consideration of receiving the advantages of mutual commerce, and obliges himself to conform to those laws which the community has thought proper to establish. There are many cases in which individuals sustain an injury for which the law gives no action, as where private houses are pulled down, or bulwarks raised on private property, for the preservation and defence of the kingdom against the king's enemies (Per Buller, J., *Plate Glass Co. v. Meredith*, 4 T. R. 797). On the same principle, viz., that a man may justify committing a private injury for the public good, the pulling down of a house when necessary, in order to arrest the progress of a fire, is permitted by the law (*Ind. P. C. XLV* of 1860, s. 81, *illus.* [b]; *Carter v. Thomas*, 1893, 1 Q. B. 673; 62 L. J. M. C. 104).

In the familiar instance, likewise, of an Act of Parliament for promoting some specific undertaking of public utility, as a canal, railway, or paving Act, the legislature will not scruple to interfere with private property, and will even compel the owner of lands to alienate them on receiving a reasonable compensation for so do-

ing. See the Land Acquisition Acts I of 1894 and XVIII of 1885 (Mines). Where an Act is susceptible of two constructions, one of which will have the effect of destroying the property of large numbers of the community and the other will not, the Courts will assume that the legislature intended the latter (*Per Erie, C. J., Chelsea Vestry v. King*, 17 C. B. N. S. 629); and since the public interest is to protect the private rights of all individuals, and to save them from liabilities beyond those which the powers given by such Acts necessarily occasion, they must always be carefully looked to, and must not be extended further than the legislature has provided, or than is necessarily and properly required for the purposes which it has sanctioned (*Per* Ld. Langdale, *Colman v. Eastern Counties R. Co.*, 10 Beav. 14; *Loosemore v. Tiverton & N. D. Ry.*, 22 Ch. D. 25).

It is upon this principle that the subjects of every State are bound to contribute towards the support of the Government, and towards the conservancy of their towns, &c., by means of imperial or local taxes.

See *Lex citius tolerare... Privatum incommodum... Privilegium non valet... Receditur a placitis...*

Salus reipublicæ suprema lex. The safety of the state is the supreme law.

Salus ubi multi consilarii. When there are many counsellors there is safety.

Salva guardia (garda). Safeguard. A writ by the king addressed to all stewards, constables and other executive officers within his dominion, commanding to their special protection certain persons therein mentioned.

Salvâ (salvo) pudore. Saving modesty. Without offence to modesty.

Salvo jure. Saving the right. Without prejudice to. An exception or reservation.

Salvo jure regis. Without prejudice to the king's right.

Salvus conductus. Safe conduct. A security given by the sovereign to a foreigner, for his safe coming into, and passing out of, the realm.

Salvus plegius. Safe pledge. A surety given for a man's appearance at a day assigned.

Sanctio justa, jubens honesta, et prohibens contraria. A just ordinance, commanding what is right and prohibiting what is wrong.

Sanguinem emere. A redemption by villeins, of their blood or tenure, in order to become freemen.

Sanguis. That right or power which the chief lord of the fee had to judge and determine cases where blood was shed.

Sans ceo que. Without this. Without its being so. See *Absque hoc*.

Sans doute. Undoubtedly; without doubt.

Sans frais. Without expense. See *Retour*...

Sans nombre. Without number. A common *sans nombre* is a common without stint, i. e., without any limit to the number of beasts which may be turned on it to feed there.

Sans recours. Without recourse to me. A phrase used by an agent who endorses a bill or note for his principal, which protects him from liability.

Sapiens omni agit cum concilio. A wise man does everything advisedly.

Sapientia legis nummario pretio non est aestimanda. The wisdom of the law cannot be valued by money.

Sapientia supplet ætatem. Wisdom supplies the want of age. A maxim of evidence applicable to children of tender years, *e. g.*, under seven or thereabouts. *Prima facie*, the evidence of such children is not receivable, by reason of a supposed immaturity of intellect or defectiveness in the appreciation of an oath. But upon this maxim, the child may be examined in order to ascertain the measure of its intelligence and religious feeling; and when its intelligence and sentiments are found to be sufficient, then its deficiency of years is supplied by this maxim—Intelligence and sobriety supply the defect of years. See s. 118 of the Ind. Evi. Act I of 1872.

See *Makitia* supplet...

Sapientis judicis est cogitare tantum sibi esse permissum, quantum commissum et creditum. It is the part of a wise judge to consider that so much only is permitted to him as is committed and entrusted to him.

Satisfactio. (*Rom. L.*) A giving of bail or security.

Satius est petere fontes quam sectari rivulos. It is better to seek the sources than to follow the streamlets, i. e., it is better not to trust to quotations. See *Melius est petere*...

Seaccarium. The Exchequer. An ancient Court of record wherein all causes touching the revenue and rights of the Crown are heard and determined; and where the revenues of the Crown are received.

Scandalum magnatum. Defamation of great men, i. e., a peer, judge, or other great officer of the realm. This formerly constituted a special offence. Abbrev. *Scan. mag.*

Sciendum. To be known.

Scienter. Knowingly; wilfully. A word applied especially to that clause in a declaration in certain classes of actions in which the plaintiff alleged that the defendant *knowingly* did or permitted that from whence arose the damage of which the plaintiff complained. In cases of injury by domestic animals, the proof of *scienter* of ferociousness is necessary.

Scientia scilorum est mixta ignorantia. The knowledge of smatterers is mixed ignorance.

Scientia utrinque par, pares facit contrahentes. Equal knowledge on the part of both renders the contracting parties equal.

Scilicet. To wit. That is to say.

Scintilla juris et tituli. A spark of law and title.

Scire debes cum quo contrahis. You ought to know with whom you bargain. One should be careful in bargaining with those who are naturally incompetent to contract, or who are rendered incompetent by law, such as insane persons, minors, persons in a fiduciary relation, &c.; also those who have not an absolute right to dispose of property, such as the manager of, or a coparcener in, a joint Hindu family, a Hindu widow, &c. See *Caveat emptor*.

Scire et scire debere æquiparantur in lege. The law considers a man cognisant of that which he ought to know. See *Ignorantia facti*...

Scire facias. That you cause him to know; that you make known. A writ judicial most commonly to call a man to show cause to the Court whence it issued, why execution of judgment passed should not be made out.

Scire facias ad audiendum errores. That you make known to hear errors.

Scire facias ad computandum et rehabendam terram. That you make known to repossess the land.

Scire facias quare restitutionem non. That you cause to know why restitution should not be had.

Scire facias quare consultatio non debet concedi post prohibitionem. That you cause to know why a consultation ought not to be granted after a prohibition.

Scire facias quare executionem non. That you cause to know why he hath not execution.

Scire feci. I have made known. The sheriff's return to a *scire facias* that he has caused notice to be given to the party against whom the writ was issued.

Scire fieri. To be made to know; to be informed.

Scire proprie est rem ratione et per causam cognoscere. To know properly is to know the reason and cause of a thing.

Scribere est agere. To write is to perform or act. Writing is acting. This maxim appears to have no application excepting in cases of prosecution for treason, and even then doubtfully. The preponderance of authority is in favour of the rule that writings not published cannot constitute an overt act of treason. See *Voluntas reputatur*...

Scriptæ obligationes scriptis tolluntur, et nudi consensus obligatio contrario consensu dissolvitur. Written obligations are superseded by writing, and an obligation of a naked assent is dissolved by assent to the contrary. See *Nihil tam conveniens*...

Scutagio habendo. A writ that lay to recover scutage.

Scutagium. Scutage or escutage; a sum paid to avoid the duties of knight's service. A pecuniary instead of a military service. A kind of tenure.

Scuto magis quam gladi opus est. It is used as a shield rather than a sword.

Scutum. A shield.

Scutum armorum. A shield or coat of arms.

Secta. A suit. The witnesses or followers of a plaintiff.

Secta ad molendinum. Suit at a mill. A writ to compel a person to do suit at a mill (*i. e.*, to grind his corn at a mill of a certain person) who was bound by a tenure or custom to do so. The writ lay especially for the lord against his tenant.

Secta curiæ. Suit of court, *i. e.*, the attendance at the lord's court to which the tenant was bound in time of peace.

Secta est pugna civilis; sicut actores armantur actionibus, et quasi gladiis acringuntur ita rei mununtur exceptionibus et defenduntur quasi clypeis. A suit is a civil warfare; for as the plaintiffs are armed with actions, it is as though they were girded with swords; so the defendants are fortified with pleas, and are defended, as it were by shields.

Secta quæ scripto nititur à scripto variari non debet. A suit which is based upon a writing ought not to vary from the writing.

Secta regalis. Suit royal. A service by which all persons were bound twice in a year to attend the sheriff's tourn.

Sectis non faciendis. For not making suit. A writ for a woman, who for her dower, or being in wardship, ought to be free from suit of Court.

Secunda superoneratione pasturæ. A writ of second surcharge of pasture, which directed the sheriff to inquire whether a defendant surcharged a common contrary to a previous admeasurement of pasture.

Secundum æquum et bonum. According to justice and honesty.

Secundum allegata et probata. According to the matters alleged and proved. According to the pleadings and the evidence. Under this maxim a party recovers in his action only according to his claim as stated and proved. See *Judex bonus... Judicis est judicare.*

Secundum arbitrium boni judicis. According to the award of a good judge.

Secundum artem. According to art. According to rule.

Secundum conditionem personarum. According to the condition of the persons of whom any words are said or spoken.

Secundum consuetudinem. According to custom or common law.

Secundum consuetudinem manerii. According to the custom of the manor.

Secundum discretionem boni viri. According to the discretion of a good man.

Secundum formam doni. According to the form of gift.

Secundum formam et effectum sursum redditionis. According to the form and effect of the surrender.

Secundum formam statuti. According to the form of the statute.

Secundum jus et norma loquendi. According to the custom and rule of speaking.

Secundum legem et consuetudinem Angliæ. According to the law and custom of England.

Secundum naturam est, commoda cujusque rei eum sequi, quem sequuntur incommoda. It is natural that the advantages of anything should follow him whom the disadvantages follow. See *Qui sentit commodum...*

Secundum prævalentiam sexus incalescentis. See *Hermaphroditus...*

Secundum regulas. According to rules.

Secundum subjectam materiam. According to the subject-matter.

Secundum tabulas. According to the will or testament.

Secundum usum. According to usage or established custom.

Securitatem inveniendi. An ancient writ lying for the king against any of his subjects, to stay them from going out of the kingdom to foreign parts.

Securitatis pacis. Surety of the peace. A writ against one who threatened another with death or bodily harm for keeping the peace.

Secus. Otherwise; contrariwise: not so.

Se defendendo. In defending himself; in self-defence. A plea for one charged with the slaying of another, that he did so in his own defence.

Sedente curiâ. While the Court is sitting.

Sedes libera. Free-bench. See *Francus bancus.*

Sed non allocatur. But it is not allowed.

Sed per curiam. But by the Court. An expression sometimes used in reports to indicate that such was the opinion of the Court.

Sed quære. But ask or inquire.

Sed quære de hoc. But ask concerning this.

Sed vide. But see.

Seisina facit stipitem. Seisin makes the heir. It is the seisin which makes a person the stock, from which the inheritance must descend. This was the maxim of law by which, before the Inheritance Act (3 & 4 Will. IV. c. 106) the title by descent was traced from the person who died last seised. Now by s. 2 of that Act descent is traced

from the last person entitled who did not inherit.

Seisina habenda quia rex habuit annum, diem et vastum. A writ for the delivery of seisin to the lord of lands or tenements of a tenant attained of felony, after the king, in right of his prerogative, had had his year, day and waste. See *Annum, dies...*

Semble. It seems. Used in reports to show that a point is not decided directly, but may be inferred. Abbrev. *Sem.* or *Semb.*

Semel malus, semper malus. Once bad, always bad. See *Malus in uno...*

Semi naufragium. Half ship-wreck, as where goods are cast overboard in a storm; also, where a ship is so much damaged that her repair costs more than her worth.

Semi-plena probatio. Half proof. The testimony of one person, upon which the civilians would not allow any sentence to be founded.

Semper in dubiis benigniora preferenda. In doubtful matters the more liberal construction is to be preferred.

Semper in obscuris quod minimum est sequimur. In obscure constructions we always apply that which is the least obscure.

Semper ita fiat relatio ut valeat dispositio. Let the reference always be so made, that the disposition may avail.

Semper paratus. Always ready.

Semper præsuntur pro legitimatione puerorum; et filiatio non potest probari. The presumption is always in favour of the legitimacy of children, and filiation cannot be proved. A child born after wedlock, of which the mother was even visibly, pregnant at the time of the marriage, is presumed to be the offspring of the husband. See *Hæres legitimus... Peter est...* The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten (*Ind. Ev. Act I of 1872, s. 112*).

Semper præsuntur pro matrimonio. The presumption is always in favour of the validity of a marriage.

Semper præsuntur pro negante. Presumption is always for the negative. The maxim is applied in the House of Lords when they are equally divided in opinion.

Semper præsuntur pro sententia. Presumption is always for the sentence.

Semper qui non prohibet pro se intervenire mandare creditur; sed et si quis ratum habuerit quod gestum est, obstringitur mandati actione. He who knows and does not prohibit what is done in his behalf, is taken to command it; and, moreover, if he ratifies what has been done, he is liable

to an action, such as would for an agent against his principal.

Semper specialia generalibus insunt. Generalities always include specialities.

Senatores sunt partes corporis regis. The senators are part of the king's body.

Senatus consulta. Ordinances of the senate. Public acts among the Romans which regarded the whole community.

Senatus consultum ultima necessitatis. A decree of extreme necessity.

Senatus decreta. The decrees of the senate. Private acts among the Romans, which concerned particular persons or personal matters.

Sensu honesto. In an honest sense. To interpret words *sensu honesto* is to take them so as not to impute impropriety to the persons concerned.

Sensus verborum est anima legis. The meaning of the words is the spirit of the law.

Sensus verborum est duplex, mitis et asper; et verba semper accipienda sunt in mitiore sensu. The meaning of words is two-fold, mild and harsh; and words are always to be received in their milder sense.

Sensus verborum ex causâ dicendi accipiendus est; et sermones semper accipiendi sunt secundum subjectam materiam. The sense of the words ought to be taken from the cause or occasion of speaking them; and discourses are always to be interpreted according to the subject-matter. In interpretations the context must always be looked to.

Sententia contra matrimonium nunquam transit in rem judicatam. A sentence against marriage never becomes or operates as a matter finally adjudicated, i. e., *res judicata*. See the *Duchess of Kingston's Case*, under the maxim *Nemo debet bis...*

Sententia facit jus, et legis interpretatio legis vim obtinet. Judgment creates the right, and the interpretation of the law has the force of law.

Sententia facit jus, et res judicata pro veritate accipitur. Judgment creates the right, and what is adjudicated is taken for truth.

Sententia interlocutoria revocari potest, definitiva non potest. An interlocutory judgment may be recalled, but not a final one.

Sententia non fertur de rebus non liquidis; et oportet quod certa res deducatur in iudicium. Judgment is not given on things not clear or certain; and things ought to be certain which are brought into Court.

Separatiam piscariam. A separate right of fishing, which passes neither the soil nor the water, but only a right of fishing.

Separatiter. Separately; distributively.

Septum. An enclosure; hedge; fence; barrier.

Sequamur vestigia patrum nostrorum. Let us follow the footsteps of our fathers.

Sequatur sub suo periculo. Let him follow at his own peril. An old writ issued against an alleged warrantor of land who had been summoned to make good his warranty, and who had three times disobeyed the summons.

Sequela causæ. The process and issue of a cause.

Sequela curiæ. Suit of court. See *Secta curiæ*.

Sequela molendini. Suit at a mill. See *Secta ad...*

Sequela villanorum. The family retinue and appurtenances to the goods and chattels of villeins, which were at the absolute disposal of the lord.

Sequendo. In following.

Sequendum et proseguendum. To follow and prosecute a cause.

Sequestratio. (*Rom. L.*) A separating or setting aside of a thing in controversy, from the possession of both the parties that contend for it, either by consent of the parties or by order of the judge.

Sequestri facias de bonis ecclesiasticis. A writ commanding a bishop to enforce a judgment against a beneficed clergyman by taking the rents and profits of the living.

Sequestro habendo. An old writ for dissolving or discharging a sequestration. After a *sequestri facias* was granted against a beneficed clergyman in order to compel his appearance in an action, the clergyman might, on his appearance, have the above writ to discharge the sequestration.

Sequitur debet potentia justitiæ, non præcedere. Power should follow justice, not precede it.

Seriatim. Severally, and in order; one by one; in a series; separately; individually.

Serjeantia idem est quod servitium. Searjeanty is the same as service.

Sermo est index animi. Speech is the index of the mind.

Sermones semper accipiendi sunt secundum subjectam materiam, et conditionem personarum. Language is always to be understood according to its subject-matter and the condition of the persons.

Sermo relatus ad personam intelligi debet de conditione personæ. A speech relating to a person is to be understood as relating to his condition. Thus any words spoken about a professional man must be taken to apply to his professional character.

Servato juris ordinè. The order of law being served.

Servi. Bondmen or servile tenants.

Servi aut fiunt, aut nascuntur; fiunt jure gentium, aut jure civili; nascuntur ex ancillis nostris. Slaves are made so or are born so; they are made slaves by the law of nations, or by the civil law; they are born slaves from our bondwomen.

Servientes ad legem. Serjeant-at-law. See *Apprenticii...*

Servile est expilationis crimen; sola innocentia libera. The crime of theft is slavish; innocence alone is free.

Servitia personalia sequuntur personam. Personal services follow the person.

Servitium. Service. That duty, which a tenant, by reason of his estate, owes to his lord.

Servitium forinsecum servitium intrinsecum. See *Forinsecum servitium*.

Servitium liberum. Free service, as to find a man and horse, or to go with the lord into the army, or to attend his Court; as opposed to base service, such as ploughing the lord's land, or hedging his demesnes, which a freeman would be unwilling to perform. Also called *servitium liberum armorum*.

Servitium militare. Knight's service. A tenure of lands by knight's service, whereby the tenant was bound to perform service in war unto the king, or the mesne lord of whom he held by that tenure. The tenure which was held only of the king was called *servitium serjeantia*.

Servitium regale. Royal service, or the prerogatives that within a royal manor belonged to the lord of it; all which royal prerogatives (*jura regalia*) were annexed to some manors by grants from the king.

Servitium scuti. The service of the shield. Scutage or escutage. See *Scutagium*.

Servitus acquietandis. A writ for a man distrained for services to one, when he owes and performs them to another, for the acquittal of such services.

Servitus est jus, quo res mea alterius rei vel personæ servit. Bond-service is a right, by which my property is subject to the rule or person of another.

Servitus stillicidii. The servitude of *stillicidium*. See *Stillicidium*.

Servitutes. Services.

Servus facit, ut herus det. The servant performs his work that the master may pay him; showing mutual consideration in a contract.

Si à jure discedas vagus eris, et erunt omnia omnibus incerta. If you depart from the law you will wander, and all things will be uncertain to everybody.

Sic interpretandum est ut verba accipiuntur cum effectu. Such an interpretation is to be made that the words may be received with effect.

Si constare poterit. If it shall be made to appear.

Si curia cognoscere velit. If the Court wish to certify.

Sicut alias. As at another time. A second writ sent out when the first was not executed. It ran thus, *præcipimus tibi, sicut*

alias præcepimus (we command you, as we have on another occasion commanded you).

Sicut beatus est, ita majus est, dare quam acciperi. Just as it is more blessed, so it is more magnanimous to give than to receive.

Sic uteri tuo ut alienum non lædas. Use your own property in such a manner as not to injure that of another. So use your own property as not to injure the rights of another.

A person may use or enjoy his own property in any manner he thinks best; but he should take care that his use or enjoyment does not injure another or another's property in any way, as his want of circumspection in this respect will render him liable to an action. As a rule, the invasion of an established right of itself constitutes an injury, for which damages are recoverable, for in all civil acts the law does not so much regard the intent of the actor as the loss and damage of the party suffering. If a man build a house so close to mine, that his roof overhangs mine, and throws the water off upon it, this is a nuisance for which an action lies (*Penruddocke's Case*, 5 Rep. 100; *Fay v. Prentice*, 1 C. B. 828). So, an action lies, if, by an erection on his own land, he obstructs my ancient lights, and windows; for a man has no right to erect a new edifice on his ground so as to prejudice what has long been enjoyed by another, *edificare in tuo proprio solo non licet quod alteri noceat*. In like manner, if a man, in pulling down his house, occasion damage to or accelerate the fall of his neighbour's, he will be liable, provided there was negligence on the part of those engaged in pulling down the house.

The subject of the right of support may be divided into the lateral support of land by adjacent land, the vertical support of the surface by the subsoil (where the property in the two is distinct), the support of buildings vertically by subjacent soil, the support of buildings laterally by adjacent soil, and the support of buildings by buildings in juxta position. In some of these instances the right is a natural one, in others acquired, that is, it is an easement.

Every proprietor of land is entitled of common right to such an amount of lateral support from the adjoining land of his neighbour as is necessary to sustain his own land in its natural state, not weighted by walls or buildings. One may not dig in his own land so near that of another that the other's land falls into his pit. If the owner of land grants the subsoil, reserving the surface to himself, the owner of the subsoil may maintain an action against the owner of the surface, if he digs holes into the subsoil to a greater extent than is reasonably necessary for the proper and fair use, cultivation and enjoyment of the surface; or if he removes so much of the surface that mines below are flooded (*Cox v. Glue*, 5 C. B. 551). So the owner of the surface is

entitled of common right to the support of the subjacent strata, so that the owner of the sub-soil and minerals cannot lawfully remove them without leaving support sufficient to maintain the surface in its natural state.

If a person has built on the extremity of his own land so as to increase the lateral pressure on the soil of his neighbour, or if the owner of the surface has erected buildings so as to require additional support from the sub-strata, he may acquire a right to such support by prescription, that is, by user of the right for the prescribed period. But if within such period the owner of the adjacent or subjacent soil digs in his own land, so that the building fall, he will not be liable for the damage, unless he exercised his right of digging so negligently or improperly as to cause the fall (*Dodd v. Holme*, 1 A. & E. 493), or unless the weight of the buildings in no way caused the sinking of the land, and the land would have fallen in, whether buildings had been erected on it or not (*Hamer v. Knowles*, 6 H. & N. 454; *Hunt v. Peake*, 1 John. 705; 6 Jur. N. S. 1071; *Metropolitan Board of Works v. Metr. R. Co.*, L. R. 4 C. P. 192; 38 L. J. C. P. 172).

Where two houses erected by different owners stand in juxta position, they in fact stand each on its own ground, and there is no right of support for the one by the other, and it will not necessarily be presumed to have been acquired, however ancient the house. It may, of course, exist by an express grant.

As to the right of a riparian owner to flowing water, see *Aqua currit*....

The maxim under consideration governs all the above cases of nuisances and the rest. Upon the same maxim depends the liability for damage resulting from a negligent use of the rights of property, as where damage is done by water or fire escaping or spreading from one man's land to another's. Acts proper for the mere defence of one's property are to be distinguished from acts done for its improvement or use. A man may erect a groin or other defence to protect his land or premises from the sea or river, or from a casual flood, though thereby the water flows more violently against B's land or premises; but he cannot improve his land by building a wharf and so cause damage to B's land (*Rex v. Pagham*, 8 B. & C. 355; *Sutton v. Clarke*, 6 Taunt. 44; *Nield v. L. & N. W. R. Co.*, L. R. 10 Exch. 4); nor can he, when the mischief is already on his land, as a flood, relieve himself by transferring it to his neighbour's land (*Whalley v. L. & Y. R. Co.*, 13 Q. B. D. 137). One who for his own purposes brings upon his land and collects and keeps there anything, as water, likely to do mischiefs if it escapes, is *prima facie* answerable for all the damage which is the natural consequence of its escape (*Fletcher v. Rylands*, L. R. 1 Exch. 265;

3 H.L. 380; *Smith v. Fletcher*, L.R. 7 Exch. 305; 9 Exch. 64; *Wilson v. Newberry*, L.R. 7 Q.B. 31; *Hurdman v. N. E. R. Co.*, 6 C.P.D. 173; but he will be excused by showing that the escape was the consequence of *vis major* or the act of God, in the sense not that it was physically impossible to resist it, but that it was practically impossible to do so (*Nichols v. Marsland*, L.R. 10 Exch. 259; 2 Ex. D. 1; 46 L.J. Ex. 174; *Box v. Jubb*, 4 Ex. D. 76; *Guru Churn Mullick v. Ram Dutt*, 2 W.R. 43; *Ram Lal Singh v. Lal Dharry Mughton*, 3 Cal. 776).—*Collett on Torts*, 6th Edn. pp. 164-70. See *Actus Dei*...

Not only does the law give redress where a substantive injury to property is committed, but, on the same principle, the erection of anything offensive so near the house of another as to render it useless and unfit for habitation is actionable (*Per Burrough, J., Deane v. Clayton*, 7 Taunt. 497; 18 R.R. 553; *Doe v. Keeling*, 1 M. & S. 95; 14 R.R. 405); the action in such case being founded on the infringement or violation of the rights and duties arising by reason of vicinage (*Alston v. Grant*, 3 E. & B. 528). But trifling inconveniences merely are not to be regarded (*Gaunt v. Fymney*, L.R. 8 Ch. App. 8; 42 L.J. Ch. 122), for *lex non facit votis delicatorem*. An action, however, does not lie if a man build a house whereby my prospect is interrupted (*Alfred's Case*, 9 Rep. 58; *Bagram v. Khettranath*, 3 B.L.R., O.C., 18), or open a window whereby my privacy is disturbed; in the latter case the only remedy is to build on the adjoining land opposite to the offensive window (*Jones v. Tapling*, 11 H.L. Cas. 290; 34 L.J. C.P. 342; *Mahomed Abdul Rahim v. Birjai Sahu*, 5 B.L.R., A.C., 676; *Komathi v. Gurunada Pillai*, 3 Mad. H.C.R. 141; *Sayyad Azuf v. Ameerbibi*, 18 Mad. 163; *Jogul Lal v. Mt. Jasoda Bebe*, 3 N.-W. P. 311). In these instances the general principle applies, *qui jure suo utitur neminem ledit*.

But the right of privacy is recognized in India by local custom, as being founded on the maxims *sic utere tuo ut alienum non laedas*, and *edificare in tuo proprio solo non licet quod alteri noceat*, and the defendant may be compelled permanently to close the door or window complained of (*Ind. Ease. Act V. of 1882*, s. 18, *illus.* [b]; *Lachman Prasad v. Jamma Prasad*, 10 All. 162; *Gokal Prasad v. Radho*, 10 All. 358; *Abdul Rahman v. Esmile*, 16 All. 69; *Manishankar v. Trikam*, 5 Bom. H.C., A.C., 42; *Kuwarji v. Bai Javer*, 6 Bom. H.C., A.C., 143; *Keshav v. Ganpat*, 8 Bom. H.C., A.C., 87; *Shrinivas v. L. Reid*, 9 Bom. H.C., A.C., 266; *Nathubhai v. Choksi Chhaganlal*, 2 Bom. L.R. 454).

As to the use of light and air by means of windows it may be observed that every man may open any number of windows looking over his neighbour's land, and, on the other hand, the neighbour may, by

building on his own land within twenty years after the opening of the window obstruct the light which would otherwise reach it (*Per Lord Cranworth, Tapling v. Jones*, 11 H.L. Cas. 311). But if the right is once acquired by an undisturbed use for the prescribed period, a subsequent disturbance of the right will give a cause of action. But it must be observed that a right cannot be acquired to the free passage of light or air to an open space of ground (*Ind. Ease. Act V. of 1882*, s. 17 [b]). In order to entitle the plaintiff to recover damages for obstruction of light or air there must be a substantial privation of light or air, not an inappreciable diminution merely (*Clarke v. Clarke*, L.R. 1 Ch. 16; *Robinson v. Whittingham*, *Ibid.*, 442; *Dent v. Auction Co.*, L.R. 2 Eq. 238; *Martin v. Headon*, *Ibid.*, 425; *London B. C. v. Tennant*, L.R. 9 Ch. 213). Still the plaintiff is entitled not only to sufficient light for his then business, but to all the light theretofore enjoyed, or which might thereafter be needed by him (*Yates v. Jack*, L.R. 1 Ch. 295; *Straight v. Burn*, L.R. 5 Ch. 163; *Moore v. Hall*, 3 Q.B. D. 178; *Ind. Ease. Act V. of 1882*, s. 23 [c]).

Although a man has a right to keep an animal, any one who keeps a wild animal (*feræ naturæ*), as a tiger or bear which escapes and does damage, is liable without any proof of notice of the animal's ferocity; but where damage is done by a domestic animal (*mansuetæ naturæ*), the plaintiff must show that the defendant knew the animal was accustomed to do mischief (*Rex v. Huggins*, 2 Ld. Raym. 1583; *Hudson v. Roberts*, 6 Exch. 697; *Filburn v. People's Palace Co.*, 25 Q.B. D. 258; *Jackson v. Smithson*, 15 M. & W. 563). Whoever keeps an animal accustomed to attack or bite mankind, with knowledge that it is so accustomed is *prima facie* liable to any person attacked or bitten by such animal, and the gist of the action for the injury is not the negligent keeping, but the keeping the animal with knowledge of its mischievous propensity, whether the animal be of a savage or domestic nature; and as to a wild animal there is always such notice (*May v. Burdett*, 9 Q.B. 101; *Jackson v. Smithson*, *supra*).

As to the rights affecting under ground water, see *Cujus est solum*...

Negligent acts affecting the public health safety or convenience, are punishable under the Ind. P.C. XLV of 1860, Chap. XIV (ss. 268 to 291).

Plaintiffs and defendants, occupants of neighbouring houses, were joint tenants of the party-wall. Defendants unroofed their house, raised the wall, and placed beams on it to rebuild their house. The lower Court found that in consequence of this alteration the rain of the defendants' house descended upon plaintiffs' verandah and caused damage and decreed that the wall be restored to its former height and the

beams be removed. *Held*, by the High Court, that taking the finding to be that the alteration created "*stillicidium*" where it did not exist before, or that it rendered more burdensome an existent "*servitus stillicidii*," it would be very dangerous to hold that every trifling excess in the exercise of a servitude should justify the pulling down of the building creating the excess; that in the present case damages should be awarded; and the injunction to remove the roof and reduce the wall be made contingent upon the defendant not removing the cause of the nuisance (*Akilandammal v. S. Vencatachala*, 6 Mad. H. C. R. 112).

Sicut natura nil facit per saltum, ita nec lex. In the same way as nature does nothing by a bound, so neither does the law.

Si equam meam equus tuus prægnantem facerit, non est tuum sed meum quod natum est. If your horse get my mare with foal, the foal is not your property but mine. See *Partus sequitur...*

Si fecerit te securum. See *Quærens non...* *Si te fecerit...*

Sigillum. Seal; signature.

Significavit. He has given notice. See *Excommunicato capiendo*.

Signum. A mark; sign. A cross prefixed as a sign of assent and approbation to a charter or deed; used by the saxons.

Silentarius. An old name for a member of the privy council, as being bound to keep the king's counsel secret.

Silentium in senatu est vitium. Silence in the senate is a fault.

Silent leges inter armæ. The laws are silent during wars. During turbulent times or war the laws are suspended, and the jurisdiction of the ordinary judicial tribunals remains in abeyance.

Similiter. In like manner. The joinder of issue was formerly so called.

Similitudo legis est, casuum diversorum inter se collatorum similis ratio; quod in uno similitum valet, valet in altero. Dissimilium dissimilis est ratio. Legal similarity is a similar reason which governs various cases when compared with each other; for what avails in one of similar cases will avail in the other. Of things dissimilar, the reason is dissimilar.

Simplex. Simple or single; as *charta simplex*, a deed poll, or single deed.

Simplex beneficium. A minor ecclesiastical benefice to which no cure of souls is attached.

Simplex commendatio non nocet. A simple recommendation does not vitiate an agreement. See *Ea quæ commendandi...*

Simplex commendatio non obligat. A simple recommendation does not bind, *i. e.*, imply a warranty. See *Ea quæ commendandi...*

Simplex iudiciarius. Anciently used for a puisne judge that was not chief in any Court.

Simplex obligatio. A simple or single bond; a bond without a condition.

Simplicitas est legibus amica; et nimia subtilitas in jure reprobatur. Simplicity is favourable to the laws; and too much subtlety in law is to be reprobated.

Simpliciter. Simply; directly; immediately absolutely; without any qualification.

Simul cum aliis. Together with others. Words used in indictments and declarations of trespass against several persons, where some of them are known, and others not known.

Simul tenentes. Joint tenants.

Sine assensu capituli. Without the assent of the chapter. A writ which lay when a dean, bishop, prebendary, abbot, prior or master of a hospital alienated the land held in right of his house without the consent of the chapter, convent or fraternity; in which case his successor should have this writ.

Sine calumniâ verborum, non observata illa dura consuetudine, qui cadit a syllaba cadit a totâ causa. Without a false interpretation of words, as those customary severities should not be observed, that he who errs in a syllable loses his cause altogether.

Sine die. Without a day; indefinitely; *i. e.*, without any day appointed for the resumption of the business on hand. An adjournment *sine die* is an adjournment without appointing any day for meeting again.

Sine facto ejus. Without any act on his part.

Sine multâ. Free from penalties.

Sine odio. Without hatred or ill-feeling.

Sine pretio nulla venditio est. There can be no sale, if there be no price. See ss. 25, 77 and 78 of the Ind. Con. Act IX of 1872.

Sine prole. Without issue. Abbrev. *S. P.*

Sine quâ non. Without which nothing is to be done. An indispensable condition. An ingredient absolutely necessary.

Sine scriptis. Without writing; unwritten.

Si non omnes. If not all. A writ, on association of justices, by which, if all in commission could not meet at the day assigned, it was allowed that two or more might finish the business.

Si quando. If when.

Si quidem in nomine, cognomine, prænomine legatarii testator erraverit, cum de personâ constat, nihilominus valet legatum. Although a testator may have mistaken the nomen, cognomen, or prænomen of a legatee, yet if it be certain who is the person meant, the legacy is valid. See *Falsa demonstratio...*

Si quid universitati debetur, singulis non debetur; nec quod debet universitas singuli debent. If any sum of money be due to an entire body or partnership, it is not due to

the individual members; nor do those individuals owe that which is due by the entire body.

Si quis. If any one. An advertisement; a notification.

Si quis aliquid dixerit contra testamentum placitum, illud in curiâ christinitatis audiri debet et terminari. If any one declare against a will, that plea should be heard and determined in an ecclesiastical court.

Si quis custos fraudem pupillo fecerit, à tutelâ removendus est. If a guardian do fraud to his ward, he shall be removed from his guardianship.

Si quis prægnantem uxorem reliquit, non videtur sine liberis decessisse. If a man leave his wife pregnant, he shall not be considered to have died without children. See *Qui in utero...*

Si quis unum percusserit, cum alium percutere vellet, in feloniam tenetur. If a man kill one, meaning to kill another, he is held guilty of felony. See *Queen v. Phomoni Ahun* (8 W. R. Cr. 78) under the maxim *Actus non facit...*

Si recognoscat. If he should acknowledge. An old writ for a creditor against his debtor, who had acknowledged his debt before the sheriff in the county. It directed the sheriff to distrain the debtor for the amount so acknowledged to be due.

Si suggestio non sit vera, litteræ patentes vacuæ sunt. If the suggestion be not true the letters patent are void.

Si te fecerit securiorem. If he gives you security. A sort of peremptory writ which issued on the plaintiff giving security effectually to prosecute his claim. See *Querens non...*

Sit in misericordiâ. That he be in mercy.

Situs. Situation; location.

Sive et masculus sive fæminâ. Whether they be male or female.

Sive plus sive minus. Whether more or less. These words in a contract which rests in fieri, i. e., not yet completed by conveyance, will only excuse a very small deficiency in the quantity of an estate; for if there be considerable deficiency, the purchaser will be entitled to an abatement on the price.

Sociagium. Socage.

Societas. (Rom. L.) Partnership.

Societas leonina. See *Leonina...*

Socii mei socius, meus socius non est. The partner of my partner is not my partner.

Soi disant. Self-styled; self-called; self-dubbed.

Soit droit fait al partie. Let right be done to the party.

Soit droit fait comme est désiré. Let right be done as it is desired. The expression of the final unqualified assent of Charles I to the Petition of Right presented to him by Parliament.

Soit fait comme il est désiré. Let it be done as it is desired. The form of words to express the royal assent to private bills. See *Le roy le...*

Solatium. (Sc. L.) Comfort; compensation; indemnification. Extra damages allowed in certain actions in addition to the actual loss suffered as consolation for wounded feelings.

Solemnitates juris sunt observandæ. The solemnities of law are to be observed.

Solet et debet. See *Debet et...*

Solidatum. Absolute right or property.

Solo cedit, quicquid solo plantatur. What is planted in the soil goes with the soil. See *Quicquid solo plantatur...*

Solum rex hoc non facere potest, quod non potest injuste agere. This alone the king cannot do, he cannot act unjustly.

Solus Deus facit heredem (or *heredem facere potest*), *non homo.* God alone makes the heir, not man. See *Deus solus... Heredem Deus...*

Solus tenens. Sole tenant. He that holds lands by his own right only without any other joined.

Solutio. A discharge; payment. The performance of that to which a person is bound.

Solutio pretii, emptionis loco habetur. The payment of the price stands in the place of the sale.

Solvendo esse. To be in a state of solvency. To be able to pay one's debts.

Solvendo in futuro. To be paid at a future time.

Solvere pœnas. To pay the penalty.

Solvit ad diem. He paid on the day appointed. An answer to an action of debt on bond, &c., that the money claimed in the action was paid on the day appointed.

Solvit ante diem. He paid before the day appointed.

Solvit post diem. He paid after the day appointed.

Solvitur in modo solventis, accipitur autem in modum accipientis. It is paid or discharged in the mode of discharging; on the other hand, it is received after the mode of receiving. See *Quicquid solvitur...*

Solvuntur tabulæ. The defendant is acquitted.

Son assault demesne. His own assault; he first assaulted me. A justification by defendant, in an action of assault and battery, that the plaintiff first assaulted him, and that what the defendant did was in his own defence.

Spado. One who has no generative power; an impotent person; a castrated person; a eunuch.

Sparsim. Scattered about here and there.

Specialia generalibus derogant. Things special take from things general. See *Generalibus...*

Specificatio. (Rom. L.) The mode of acquisition of property whereby he who by his labour converted the material of another into a new product became owner of the product. He was, however, liable to compensate the owner.

Spes impunitatis continuum affectum tribuit delinquendi. The hope of impunity holds out a continual temptation to crime.

Spes recuperandi. The hope of recovery.

Spes successionis. Expectancy of succession.

Spoliatio. A pillaging; robbing; plundering; spoliation.

Spoliatus debet ante omnia restitui. A person whose property has been despoiled is entitled to the restitution of that property before all others. See *A spoliatus...*

Sponsalia. Stipulatio sponsalitia. Espousals: mutual promises to marry.

Sponsio judicialis. (Rom. L.) A judicial agreement or engagement. A proceeding whereby an action was supposed to be brought by consent of the parties to determine some disputed right without the formality of pleading, saving thereby both time and expense. See ss. 527 to 531 of the Code of Civ. Pro. XIV of 1882.

Sponte oblata. A free gift or present to the Crown.

Sponte sua. Of one's own accord.

Spurii. Children concerned in prostitution; illegitimate children. Sing. *Spurius*.

Stabit presumptio donec probetur in contrarium. A presumption will stand good until the contrary is proved. The Ind. Evi. Act I of 1872, s. 4 provides that whenever it is directed by the Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved. For instances of such presumptions see ss. 79 to 85 and 89 of the Act.

Stare ad rectum. To stand trial, or abide by the sentence of the Court.

Stare decisis, et non movere quietam. To stand by matters decided, and not to stir up points set at rest. See *Omnis innovatio...*

Stari in judicio. To sue; to litigate in a Court.

Status. Legal position. The situation of a man in regard to his property; his interest in any lands; the state or issue of a case.

Status de manerio. The state of a manor. All the tenants within the manor, met in court of their lord, to do their customary suits and to enjoy their rights and usages, were termed *omnis status de manerio*.

Status quo. The state in which any thing is already. To leave a thing in *statu quo* is to leave it unaltered, *i. e.*, as it is.

Status quo ante bellum. The state of things before the war.

Statuta pro publico commodo latè interpretantur. Statutes made for the public good ought to be liberally construed.

Statuta suo clauduntur territorio, nec ultra territorium disponent. The laws of every State are binding in its own territory, and not in a foreign territory. See *Extra territorium jus...*

Statuto mercatorio. An ancient writ for imprisoning him who had forfeited a statute merchant bond, until the debt was satisfied.

Statuto stapula. An old writ of execution against one who had forfeited a statute staple bond.

Statutum affirmativum non derogat communi legi. An affirmative statute does not derogate from the common law.

Statutum de laborariis. A writ judicial, for apprehending such labourers as refused to work as required by statute.

Statutum generaliter est intelligendum quando verba statuti sunt specialia, ratio autem generalis. When the words of a statute are special, but the reason of it general, it is to be understood generally.

Statutum speciale statuto speciali non derogat. One special statute does not derogate from another special statute.

Stellionatus. Obtaining by false pretences, or swindling; the deceitful selling of a thing, as if a man should sell as his own estate that which belongs to another. In Roman Law, the making a second mortgage without giving notice of the first.

Stet billa. May the bill or claim stand. The prayer of a plaintiff who has attached goods of a debtor, upon the latter disputing the debt.

Stet processus. Let the proceedings stay. An order of the Court to stay proceedings by consent of the parties.

Stillicidium. (Rom. L.) The water that falls from the roof of a house in scattered drops. An easement or servitude by which the owner of one house was entitled to compel the owner of a neighbouring house to receive the rain water from the former house on to the latter. See *Akilandammal v. S. Venkatachala Mudali* (6 Mad. H. C. R. 112), under the maxim *Sic utere tuo...*

See *Aque immittende*.

Stipulatio. (Rom. L.) The most solemn and formal of all the verbal contracts. A stipulation; contract; bargain.

Stirpes. The root; stock; race or lineage. See *Per stirpes*.

Stramineus homo. A man of straw, one of no substance, put forward as bail or surety.

Strictissimi juris. Of the most strict law, *i. e.*, to be most strictly applied.

Strictum jus. Mere law, in contradistinction to equity.

Stuprum. (Rom. L.) Dishonour; debauchery; violation. Any union of the sexes forbidden by morality.

Sub iudice. Under investigation or consideration.

Sublata causâ tollitur effectus. Remove the cause, the effect ceases.

Sublatâ veneratione magistratum, republica ruit. The commonwealth perishes if respect for the magistrates be taken away.

Sublato fundamento cadit opus. Remove the foundation, the superstructure falls.

Sublato principali tollitur adjunctum. The principal being taken away, its adjunct is also taken away. Where uses are raised by a deed which is itself void, as in the instance of the conveyance of a freehold in futuro, the uses mentioned in the deed cannot arise (*Goodtitle v. Gibbs*, 5 B. & C. 714; 29 R. R. 386). When the estate to which a warranty is annexed is defeated, the warranty is also defeated. See *Accessorium non ducit...*

Sub modo. Within bound or measure. Under condition or restriction.

Sub pede sigilli. At the foot of the seal; under seal.

Sub periculo falsi. Under the risk of forgery; standing to the consequences of founding on a forged deed. Thus where a deed is challenged as forged, the party founding on the deed declares that he abides by the deed quarrelled *sub periculo falsi*, which has the effect of pledging him to stand to the consequences of founding on a forged deed.

Subpœna. Under a penalty. A writ whereby formerly all persons under the degree of peerage were called upon to appear and answer to a bill in Chancery.

Subpœna ad testificandum. A writ directed to a person commanding him, on pain of penalty, to appear and give evidence.

Subpœna ducet tecum. You shall bring with you under penalty. A writ personally served upon a person who has in possession any writing &c., which would be evidence, to compel him to produce it.

Sub potestate parentis. Under the power or direction of the parent.

Subsequens matrimonium tollit peccatum præcedens. A subsequent marriage removes a previous criminality. A legal marriage contracted subsequently to sexual intercourse between the parties thereto removes the previous legal blemish in the status of the offspring conceived of such intercourse, and born prior to the marriage. This maxim held good in Roman Law, holds good in Scotch Law, but is bad in English Law. See *Hæres legitimus...*

Sub silentio. In silence.

Substantia prior et dignior est accidente. The substance is prior to and of more weight than the accident.

Sub voce. Under the word. Abbrev. *S.V.* Used in reference to a word in a dictionary or alphabetical glossary.

Succurritur minori; facilis est lapsus juvenutis. A minor is assisted; a mistake of youth is easy.

Sufferentia pacis. A grant or sufferance of peace or truce.

Suggestio falsi et suppressio veri. A suggestion of falsehood and suppression of truth.

Sui generis. Of its own kind.

Sui juris. Of his own right. A person who is neither a minor nor insane, nor subject to any other disability, is said to be *Sui juris*. See *Alieni juris*.

Summa charitas est facere justitiam singulis et omni tempore quando necesse fuerit. The greatest charity is to do justice to every person, and at any time whenever it might be necessary.

Summa lex, summa cruz. Extreme law is extreme punishment. See *Aspices juris...*

Summa providentia. The utmost precaution.

Summa ratio (lex) est quæ pro religione facit. The highest law is that which supports religion. The best rule is that which advances religion. That rule of conduct is to be deemed binding which religion dictates.

Under this maxim Noy states in his work on Legal Maxims that if any general custom were directly against the law of God, or if a statute were made directly contrary thereto, for instance, if it were enacted that no one should give alms to any object in ever so necessitous a condition, such custom or statute would be void. Similarly Blackstone says that if any human law should enjoin us to commit an offence against the divine law, we are bound to transgress that human law.

But these statements are not to be regarded as legal propositions. In deciding doubtful points of law, Courts can give due weight to moral considerations, but where the law, whether by statute or otherwise, is clear, they are bound to administer the law as they find it, irrespective of opinions upon its morality. If it is necessarily mischievous, it would be no argument, if the statute expressly authorized the thing. The duty of judges upon the occasion is to administer and not to make the law (*Per Lord Halsbury*, L. R. 1896, A. C. 467; *per Lord Herschell*, L. R. 1897, A. C. 460). See *Judicis est jus dicere...*

According to the constitutional law of England, when a new country is added to the dominion of the British Crown, the people of the country are to be governed according to their own laws, until they are changed by the supreme authority of the state (*Mayer of Lyons v. East India Company*, 1 Moo. I. A. 171).

The English statute as to superstitious uses is not applicable to the Courts in India, and those Courts have jurisdiction to entertain suits for the establishment and

administration of native religious institutions (*Advocate-General v. Vishwanath*, 1 Bom. H. C., App., 9).

Statute 21 Geo. III, c. 70, gave to Mehomeds and Hindus the right to observe their own religious customs and to have matters of contract and dealing between party and party determined by their own laws and usages.

Under Bom. Reg. IV of 1827, s. 27, the law to be observed in the trials of suits was the Acts of Parliament, and Regulations of Government applicable to the case; in the absence of these, the usage of the country in which the suit arose; if none such appeared, the law of the defendant.

Where a particular act is treated by the Indian Penal Code as criminal (*e. g.*, selling of minors for the purpose of prostitution) it is no defence that the Hindu religion sanctions the practice. An offence is every transgression of the Penal Law, and a rule of Penal Law is a rule of Public Law, and necessarily overrides every precept of Private Law, and cannot be affected by any argument derived from that law (*Ex parte Padmavati*, 6 Mad. H. C. R. 415).

The following acts have been made punishable under the Ind. P. C. XLV of 1860, ss. 295 to 298:—Injuring or defiling place of worship with intent to insult the religion of any class; Disturbing religious assemblies; Trespassing on burial places, &c.; Uttering words, &c., with deliberate intent to wound the religious feelings of any person.

Summitiones aut citationes nullæ liceant fieri infra palatium regis. No summons or citations are permitted to be served within the king's palace. The high privilege enforced by this maxim is due to the great dignity and veneration which attach to the sovereign. Parties are therefore protected from arrest while actually in the presence of the sovereign or in one of his royal palaces.

Summonitores scaccarii. Officers who assisted in collecting the king's revenues by citing the defaulters therein into the Court of Exchequer.

Summum bonum. The chief good.

Summum jus, summa injuria. Extreme law is extreme injury. See *Aspices juris*... The strictest exaction of one's legal rights is the supremest infliction of injury upon others. The maxim had some application, perhaps, before the fusion of Law and Equity, but which has none since then. Probably the maxim was one of the reasons which assisted in the original development of equity as a substantive separate jurisdiction, as a too rigorous interpretation of the law was not unfrequently productive of results which did not accord with equity.

Sumus agere posse quemlibet hominem aut suo nomine, aut alieno; alieno veluti procuratorio, tutorio, curatorio. A person may conduct

an auction either in his own name or in that of another; for instance, if he is an advocate, a guardian, or an agent.

Super altum mare. Upon the high sea.

Superficiarivus. (*Rom. L.*) A builder upon another's land under a contract, *i. e.*, one who has a house on another man's land.

Super fidem chartarum mortuis testibus, erit ad patriam de necessitate recurrendum. The truth of charters (*i. e.*, writings) is necessarily to be referred to a jury, when the witnesses are dead.

Superflua non nocent. Superfluities do not hurt. See *Surplusagium*... *Utile per inutile*...

Super jurare. A term used in ancient law when a criminal endeavoured to excuse himself by his own oath or the oath of one or two witnesses, and the crime objected against him was so plain and notorious, that he was convicted by the oaths of many more witnesses.

Superoneratio pastura. Surcharge of pasture or common by the commoner putting more beasts in a forest or pasture than he has a right to do.

Superoneravit. He has surcharged.

Super prerogativâ regis. A writ which lay against the king's tenant's widow for marrying without the king's license.

Super quo. Upon which; whereupon.

Supersedeas. That you supersede. A writ that lay in many cases, signifying a command to stay some ordinary proceedings at law, on good cause shown, which ought otherwise to proceed.

Super subjectam materiam. On the matter submitted, *e. g.*, a lawyer is not responsible for his opinion, when it is given *super subjectam materiam*, on the circumstances as they are laid before him by his client.

Super visum corporis. Upon view of the body. Applied to an inquest held by a coroner on the body of a dead person.

Super visum vulneris. Upon the sight or examination of the wound.

Supplicavit. He hath entreated. A writ which issued out of Chancery or the Queen's Bench for taking surety of the peace against a man who was likely to injure another.

Supplicium. (*Rom. L.*) Any corporal punishment, including death.

Suppressio veri. Suppression of truth. See *Suggestio falsi*...

Supra. Above or after. The word occurring by itself in a book refers the reader to a previous part of the book, like *ante*.

Supra protest. After protest. An acceptance of a bill upon protest.

Suprema potestas seipsam dissolvere potest. Supreme power can dissolve itself.

Sur. Upon. The old forms of writs began with this word to express the ground of action.

Sur cui ante divortium. See *Cui ante...*

Sur cui in vita. See *Cui in...*

Sur disclaimer. A writ brought by a lord to recover back land against a tenant who had disowned or disclaimed the lord's right to his rents or services.

Sur disseisin en le quibus. See *De quibus...*

Surplusagium non nocet. Mere surplusage does not vitiate anything. See *Superflua ... Utile per inutile...*

Sursum redditio. A reddition; a surrender.

Suspendatur per collum. That he be hanged by the neck. Abbrev. *Sus. per coll.*

Suspensio. Suspension. A temporal stop, or hanging up, of a man's right for a time.

num cuique. Let every one have his own. Let the laws of property be strictly observed.

Suum cuique incommodum ferendum est, potius quam de alterius commodis detrahendum. Every man should bear his own loss, rather than take away from the benefits of another.

Suum cuique tribuere. To give to each his due.

Sylvestres. Living in woods.

Syngrapha. A deed, bond, or writing under the hands and seals of all the parties. Such documents are called bilateral; while a *chirographum* is unilateral, i. e., executed by the obligor only.

T

Tabulae nuptiales. (*Rom. L.*) A written record of a marriage; or the agreement as to the *dos* (dower).

Tabula in naufragio. A plank in the shipwreck. According to the doctrine of tacking, if a third mortgagee who had at the time of his mortgage no notice of the second mortgage purchases the first mortgage, both the first and the third mortgages shall be paid out of the estate before any share of it can be appropriated to the second, on the ground that the third mortgagee, by thus obtaining the legal estate has both law and equity on his side, which supersedes the mere equity of the second; and consequently, it is right that the third should thus seize what is called *tabula in naufragio*, a plank in the shipwreck, and so leave the second to perish.

Tabularius. (*Rom. L.*) A notary.

Tacita hypotheca. (*Rom. L.*) A lien.

Tacita quaedam habentur pro expressis. Things unexpressed are sometimes considered as expressed.

Tadium vitæ. Weariness of life.

Tagni immittendi. (*Rom. L.*) The right of inserting a beam or timber from the wall of one house into that of a neighbouring house, in order that it may rest on and be supported by the latter.

Tales de circumstantibus. Such of the persons standing around. So many of the bystanders. Where by reason of the default of the jury, or of challenge, there is not a sufficient number of jurors empanelled, the judge may direct the sheriff to add the names of a sufficient number of persons qualified to act as jurymen, who may be present or can be found, who are called *tales de circumstantibus*.

Talis interpretatio semper fienda est, ut evitetur absurdum et inconueniens, et ne iudicium sit illusorium. Interpretation is always to be made in such a manner, that what is absurd and inconvenient may be avoided and the judgment be not illusory.

Talis non est eadem; nam nullum simile est idem. What is like is not the same; for nothing similar is the same.

Taliter processum est. So it has proceeded. Words formerly used by which a defendant, in justifying his conduct by the process of an inferior Court, alleged in his pleading the proceedings in such inferior Court.

Tallagium facere. To give up accounts in the Exchequer, where the method of accounting was by tallies.

Tam ad triandum quam ad inquirendum. As well to try as to inquire.

Tamen quære. However inquire.

Tam in redditione iudicii quam in adjudicatione executionis. As well in rendering of judgment as in adjudication of the execution. See *Tam quam*.

Tam quam. So as; as well as. A writ of error from inferior Courts, when the error is supposed to be as well in giving the judgment as in awarding execution upon it (*Tam in redditione iudicii quam in adjudicatione executionis*).

Tantum bona valent, quantum vendi possunt. Things are worth what they will sell for.

Tarde venit. It came too late.

Taxatio ecclesiastica. The valuation of ecclesiastical benefices made through every diocese in England on the occasion of Pope Innocent IV granting to king Henry III the tenth of all spirituals for three years.

Temptatio. Tentatio. A trial or proof.

Tenant per copie. Tenant by copyhold.

Tenementis legatis. An ancient writ lying to the city of London or any other corporation (where the old custom was that men might devise by will lands and tenements as well as goods and chattels) for the hearing and determining any controversy touching the same.

Tenementum. Tenement. A house or home-stall; but more largely, it comprehends not only houses but all corporeal inheritances which are held of another, and all inheritances issuing out of or exercisable with the same.

Tenendas. (Se. L.) That clause of a charter or grant of land by which the particular tenure is expressed. It corresponds to the *tenendum* in an English conveyance.

Tenendum. To hold; that part of a deed of lease which limits and defines the interest of the lessee in the land granted.

Tenendum per servitium militare. To hold by military service.

Tenens ex terminor. A tenant that holds the lands or tenements for a term of years or life; a termor.

Tenens per legem Angliæ. Where a man takes a wife seised in fee simple, or fee-tail general, or as heiress in special tail, and has issue by her, male or female, born alive, which by any possibility may inherit, and the wife dies the husband holds the lands during his life and is called *tenens per legem Angliæ* or tenant by the courtesy of England. See *Jus curialitatis*...

Tenentia. Tenancy.

Tenentibus in assisis non onerandis. A writ they lay for him to whom a disseisor had alienated lands, that he might not be molested for damages awarded if the disseisor had wherewith to satisfy them himself.

Tenet. Which he holds.

Tenore indictamenti mittendo. A writ whereby the record of an indictment and the process thereupon might be called out of another Court into the King's Bench.

Tenore præsentium. By the tenor of these presents, i. e., the matter contained therein, or rather the intent and meaning thereof.

Tenor est qui legem dat feudo. It is the tenor of the feudal grant which regulates its effect and extent. See *Cujus est dare*...

Tenor investiture est inspiciendus. The tenor of an investiture is to be searched into.

Tenuit. Which he held.

Termini. Bounds.

Terminum. A day given to a defendant.

Terminus ad quem. The term to which; the terminating point; the goal or end.

Terminus annorum certus debet esse et determinatus. A term of years ought to be certain and determinate.

Terminus à quo. The term from which; the starting point.

Terminus et feodum non possunt constare simul in una eademque personâ. A term and the fee cannot both be in one and the same person at the same time.

Terra affirmatâ. Land let to farm.

Terra assisa. Land rented or farmed out for certain assessed rent in money or provision: as opposed to *terra dominica*, which was held in domain, and occupied by the lord.

Terra censuilis. Land liable to taxes, and rented or let for rent.

Terra culta. Land that is tilled or manured, as opposed to *terra inculta*.

Terra debilis. Weak or barren ground.

Terra dominica. See *Terra assisa*.

Terra agitata. Lands which are charged to keep up the seabanks.

Terræ curtiles (or *dominicales*). See *Curtiles terræ*.

Terræ dominicales regis. The king's demesne lands; Crown lands.

Terræ tenens. Terre tenant. The occupying tenant of the land; for example, a lord of a manor has a freeholder who lets out his freehold to another to be occupied; this occupier (having the actual possession) is called the terre tenant.

Terræ transit cum onere. Land passes with its encumbrances. See *Transit terra*...

Terra extendi. Land to be valued. A writ directed to the escheator, willing him to inquire and find out the true yearly value of any land by the oaths of twelve men, and to certify the same into the Chancery.

Terra firma. Solid land.

Terra frusca (*frisca*). Fresh land; such as has not been lately ploughed.

Terragium. Land tax.

Terra lucrabilis. Land that may be gained from the sea, or inclosed out of a waste, to a particular use.

Terra manens vacua occupanti conceditur. Land lying unoccupied is given to the occupant. See *Qui prior est tempore*...

Terra nova. Land newly asserted and converted from wood ground to arable.

Terra sterilis, ex vi termini, est terra infæcunda nullum ferens fructum. Sterile land, by the force of the term, is barren land bearing no fruit.

Terra testamentalis. Gavelkind land; so called from being formerly devisable by will, when other lands were not so devisable.

Terra vestita. Land sown with corn.

Terra vulgi (or *popularis*). Folk land; the land of the vulgar people. Copy-hold lands were so called.

Terra vrainabilis. Tillable land.

Terris bonis et catallis rehavendis post purgationem. A writ for a clerk to recover his lands, goods, and chattels, formerly seised, after he had cleared himself of the felony of which he was accused, and delivered to his ordinary to be purged.

Terris et catallis tentis ultra debitum levatum. A judicial writ for the restoring of lands or goods to a debtor that is distrained above the quantity of the debt.

Terris liberandis. A writ that lay for a man convicted by attaint to take a fine for his imprisonment and then to deliver to him his lands and tenements again. Also a writ for the delivery of lands to the heir, after homage and relief performed, or upon security taken that he should perform them.

Tertius interveniens. (Rom. L.) One who voluntarily interposes in a suit depending between others with a view to the protection of his own interests.

Testamenta cum duo inter se pugnancia reperiuntur, ultimum ratum est; sic set cum duo inter se pugnancia reperiuntur in eodem testamento. When two conflicting wills are found, the last prevails; so it is when two conflicting clauses occur in the same will.

Testamenta latissimam interpretationem habere debent. Wills ought to have the broadest interpretation.

Testamenti factio. (Rom. L.) The ceremony of making a testament, either as testator, heir, or witness.

Testamentum injustum. A void will.

Testamentum inofficiosum. An inofficious testament; i. e., one which, though made in legal form, violated some natural right. See *Querela inofficiosi*...

Testamentum irritum. An ineffectual testament.

Testamentum omne morte consummatur. Every will is perfected by death.

Testari. To be witnessed.

Testatio mentis. The witnessing of the mind; a testament; a will.

Testatoris ultima voluntas est perimplenda secundum veram intentionem suam. The last will of a testator is to be thoroughly fulfilled according to his real intention.

Testatum. Witnessing; the operative clause of a deed, comprehending the consideration and its receipt, the name of the grantor, the operative verbs of transfer, the name of the grantee with appropriate words of limitation. The witnessing part of a deed beginning "Now this indenture witnesseth" &c. Also a writ issued into a county other than that in which the action was laid, reciting that the sheriff of the county in which the action was laid had *testified* that he was unable to find the defendant. Such recital was generally fictitious. See *Latitat*.

Testatum capias. If the defendant could not be taken upon a *ca. sa.* (*capias ad satisfaciendum*) in the county where the action was laid, there might issue a *testatum ca. sa.* into another county. See *Testatum*.

Testatum fieri facias. See *Fieri facias*.

Teste. In witness. That part of a writ, warrant, or other proceeding, wherein the date is contained, beginning with the words *teste meipso*, meaning the sovereign if it be issued in the name of the sovereign; but if the writ be a judicial writ, the word *teste* is followed by the name of the chief judge of the Court in which the action is brought.

Teste meipso. Witness myself.

Testes ponderantur, non numerantur. Witnesses are to be weighed, not to be counted or numbered. See *Testimonia*...

Testes qui postulat debet dare eis sumptus competentes. Whosoever demands witnesses, must find them in competent provision.

Testibus deponentibus in pari numero dignioribus est credendum. Where the number of witnesses is equal on both sides, the more worthy are to be believed.

Testimonia ponderanda sunt, non enumeranda. Evidence is to be weighed, not enumerated. No particular number of witnesses shall in any case be required for the proof of any fact (*Ind. Evi. Act I of 1872*, s. 134). The requiring of a plurality of witnesses clearly imposes an obstacle in the administration of justice. The testimony of an infamous witness is not to be rejected on that account. See *Testis lupinarius*. An accomplice is a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice (*Ibid.*, ss. 132 and 30; *Queen v. Elahi Bux*, B. L. R., Sup. Vol., 459; 5 W. R. Cr. 80), but it is necessary that evidence of accomplices should not be left to a jury without such directions and observations from the judge as the circumstances of the case may require.

Under the English Law something more than the uncorroborated evidence of a single witness (i. e., the evidence of at least two witnesses) was formerly required in cases of treason, perjury, bastardy, &c., but the effect of s. 134 above referred to is that the evidence of a single witness is sufficient proof of any fact, if the Court or the jury believe him. In determining the credit due to witnesses the judge should have regard to their integrity, their ability, their number and consistency with each other, and the conformity of their testimony with collateral circumstances.

Under s. 59 of the Trans. of Pro. Act IV of 1882 a mortgage deed is required to be attested by at least two witnesses; and under s. 50 of the Ind. Suc. Act X of 1865, a will also must be attested by at least two witnesses. These documents, being required by law to be attested, are not to be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the Court, and capable of giving evidence (*Ind. Evi. Act I of 1872*, s. 68). If no such attesting witness can be found, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person (*Ibid.*, s. 69). But if the executing party himself admits the execution of the document, the admission shall be sufficient proof of execution as against him (*Ibid.*, s. 70). If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence (*Ibid.*, s. 71).

Testimonium testis quando in una parte falsum, præsuntur esse et in ceteris partibus

falsum. When the testimony of a witness is false in one part, it is presumed to be false in all other parts. See *Falsus in uno*...

Testis de auditu non probat nisi in antiquis. A witness cannot depose as to hearsay except in ancient matters. See *Res inter alios acta*...

Testis debet attestari de his vel quæ vidit vel quæ sensu corporis certa esse percepit, alias dolus præsumitur, nec ignorantia vel erroris excusatio prodest. A witness ought to depose to those things which he has either seen or ascertained to be true by his bodily senses; otherwise deceit is presumed, and neither the excuse of ignorance nor error is of use. See s. 60 of the Ind. Evi. Act I 1872. See *Res inter alios acta*...

Testis de visu præponderat aliis. An eye-witness is preferred to others.

Testis lupanaris. A whore is so called when she is giving evidence on oath or by solemn affirmation.

Testis lupanaris sufficit ad factum in lupanari. A lewd person is a sufficient witness to a fact committed in a brothel. The testimony of an infamous witness is not to be rejected on that account. See *Testimonia ponderanda*...

Testis nemo in suâ causâ esse potest. No one can be a witness in his own cause. See *Nemo in propria*...

Testis oculatus unus plus valet quam auriti decem. One eye-witness is worth more than ten ear-witnesses.

Testium numerus si non adjicitur, duo suffi- ciunt. If a number of witnesses is not added, two suffices. See *Testimonia ponderanda*...

Thesaurus inventus. Treasure discovered; treasure trove.

Thesaurus inventus est vetus dispositio pecuniæ, etc., cujus non extat modo memoria, adeo ut jam dominum non habeat. Treasure-trove is an ancient hiding of money, &c., of which no recollection exists, so that it now has no owner. See *Occultatio*...

Thesaurus non competit regi, nisi quando nemo scit qui abscondit thesaurum. Treasure does not belong to the king, unless no one knows who hid it.

Thesaurus regis est vinculum pacis et bellorum nervi. The king's treasure (the public revenue) is at once the bond (or security) of peace and the sinews of war.

Timores vani sunt æstimandi qui non cadunt in constantem virum. Fears which do not affect a resolute person, are to be accounted vain. See *Non suspicio*...

Titulus est justa causa possidendi id quod nostrum est. A title is the just cause of possessing that which is our own.

Titulus justus. Rightful title.

Toga. Verilis. The manly robe.

Tota sua vita durante. During the whole of one's life.

Tolidem verbis. In so many words.

Tort. Wrong or injury.

Tort à le ley est contrarie. Tort is contrary to law.

Toties quoties. As often: so often; as often as occasion shall arise.

Totum. The whole; all; entire.

Totum conjunctim et nihil per se separatim. The whole jointly and not separately by itself.

Totum præfertur unicuique parti. The whole is preferable to any single part.

Toujours et encore pressz. (Nor.-Fr.) Always and still ready.

Tout jours. (Fr.) For ever.

Tout temps prist. At all times ready. A plea by a defendant to an action that he is and always has been ready to satisfy the plaintiff's demand. At the present day the proper course would be to pay the money into Court and to plead the payment in discharge of the liability.

Tout temps prisz (prist) et encore est. (Nor.-Fr.) Always was and is at present ready.

Tracent fabrilla fabri. The smiths should perform the work of smiths.

Traditio. The simple act of delivery.

Traditio loqui facit chartam. Delivery makes the deed speak, i. e., makes the deed take effect. This delivery must be to the feoffee or grantee, and not to a stranger. Delivery is essential to the due execution of a deed; so that, if executed after the day on which it purports to bear date, it takes effect from the day of delivery and not from the day of the date, according to the maxim *traditio loqui facit chartam* (*Steele v. Mart*, 4 B. & C. 272; *Goddard's Case*, 2 Rep. 4; *Clayton's Case*, 5 Rep. 1; per Pattenon, J., *Browne v. Burton*, 17 L. J. Q. B. 50). "A deed," says Bayley, J., "has no operation until delivery" (*Stykes v. Wardle*, 4 B. & C. 911).

Traditionibus dominia rerum, non nudi pacti, transferuntur. Lordships are transferred by deliveries not bare agreements.

Traditio nihil aliud est quam rei corporalis de personâ in personam, de manu in manum, translatio aut in possessionem inductio; sed res incorporales, quæ sunt ipsum jus rei vel corpori inherens, traditionem non patiuntur. A delivery is no other than a transfer or induction into possession of a corporeal property from person to person, from hand to hand; but incorporeal properties, which are the inherent right itself to the property or body, do not suffer livery.

Transactio. An agreement; compromise.

Transferuntur dominia sine titulo et traditione, per usucapationem, scil. per longam continuam et pacificam possessionem. Rights of dominion are transferred without title or delivery by usucaption, to wit, long continued and quiet possession.

Transgressio. A trespass.

Transgressione multiplicatâ crescat poenæ inflicto. Where transgression is multiplied, the infliction of punishment should be increased. See *Ubi jus...*

Transgressiones. Writs or actions of trespass.

Transit in rem judicatam. The matter passes into a judgment. A matter already judicially decided; whereby the original cause of action is merged and destroyed in the judgment.

Transit terra cum onere. The land passes with its encumbrances. For instance, covenants running with the land pass along with it and bind the assignee of the lessee, or the heir or devisee of the covenantor. The principle holds not merely with reference to covenants, but likewise with reference to customs annexed to the land; for instance, the custom of gavelkind, being a custom by reason of the land, runs therewith. See *Qui sentit commodum...*

If land is mortgaged, the debt remains a charge on the land, into whosoever hands it may pass by sale, &c., provided the mortgagee is not guilty of any fraud.

Transitus. A transit; the passing from one place to another.

Tresayle. A grandfather's grandfather. See *Mort d'ancestor.*

Tres faciunt collegium. Three persons form a corporation.

Tresor trouve. Treasure found; treasure-trove.

Triatio ibi semper debet fieri, ubi juratores meliorem possunt habere notitiam. Trial ought to be always held there where the jury can have the best knowledge. See *Ibi semper...*

Trigamus. See *Bigamus seu...*

Trina admonitio. Threefold warning. See *Peine forte...*

Trinoda necessitas; scil. pontis reparatio, arcis constructio, et expeditio contra hostem. The triple obligation; to wit, the repairing of a bridge, the building of a fort, and an expedition against the enemy.

Tritavia. A great-grandmother's great-grandmother. The female ascendant in the sixth degree.

Tritavi-pater. Father of *Tritavus*. See *Pater.*

Tritavus. Great-grandfather's great-grandfather. See *Pater.*

Turbagium. Turbary. The right of digging turf on another man's ground.

Turpis casus (or *contractus*). A foul contract.

Turpis causa. A base or vile consideration on which no action can be founded.

Turpis est pars quæ non convenit cum suis toto. That part is bad which accords not with its whole.

Tuta est custodia quæ sibi met creditur. That guardianship is secure which trusts to itself alone.

Tutius erratur ex parte mitiore. It is safer to err on the gentler side.

Tutius semper est errare acquitando quam in puniendo; ex parte misericordie quam ex parte justitie. It is always safer to err in acquitting than in punishing; on the side of mercy than of strict justice. Whence arises the presumption of innocence, until conviction. In all criminal cases, whenever upon the evidence given a reasonable doubt as to the prisoner's guilt or innocence is raised, the best rule is to incline to an acquittal. See *In dubio prodote...*

A penal statute should, when its meaning is doubtful, be construed in the manner most favourable to the liberties of the subject, and this is more especially so when the penal enactment is of an exceptional character (*Reg. v. Brista*, 1 Bom. 208).

Where facts are as consistent with a prisoner's innocence as with his guilt innocence must be presumed; and criminal intent or knowledge is not necessarily imputable to every man who acts contrary to the provisions of the law (*Queen v. Nobokisto Ghose*, 8 W. R. Cr. 87).

Tutor alienus. A guardian in tort or by intrusion. This may arise by a person intruding upon an infant's property and receiving profits belonging to the infant; for which he must account, being regarded as the infant's trustee.

U

Uberrima fides. Most abundant confidence or faith, which is required in contracts between persons in a particular relationship as guardian and ward, attorney and client, physician and patient, confessor and penitent. In such contracts the fullest information is required to be given beforehand by the person in whom the confidence is reposed to the person confiding, or the Court will refuse to enforce the contract on behalf of the former.

Ubi. Where.

Ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest. When a thing is granted, that also is supposed to be granted without which the grant itself would not exist, i. e., would be of no effect. See *Cuiusque aliquis...*

Ubi cessat remedium ordinarium, ibi decurritur ad extraordinarium, et nunquam decurritur ad extraordinarium ubi valet ordinarium. Where the ordinary remedy fails, then recourse must be had to an extraordinary one, but recourse is never had to the extraordinary where the ordinary is sufficient.

Ubi culpa est ibi pena subesse debet. Where there is culpability, the punishment ought to be submitted to.

Ubi cunq̃ue est injuria ibi damnum sequitur. Where there is an injury, there a loss or damage follows. See *Injuria cum damno.*

Ubi damna dantur, victus victori in expensis condemnari debet. Where damages are given, the losing party should be condemned in costs to the victor. See *Victus victori*...

Ubi de obligando quaeritur propensiores esse debemus si occasionem habeamus ad negandum, ubi de liberando ex diverso ut facilius sic ad liberationem. Where it is a question of obligation, we ought to lean to a negative, where it is a question whether a debtor shall be liberated, to an affirmative decision. See *In dubio prodele*...

Ubi eadem ratio ibi idem jus (or lex), et de similibus idem est judicium. Where the same reason exists, there the same law prevails; and of things similar, the judgment is similar.

The law consists, not in particular instances and precedents, but in reason of the law, and *ubi eadem ratio ibi idem jus*, for reason is the life of the law, *ratio est legis anima*; nay, the common law itself is nothing else but reason; which is to be understood of an artificial perfection of reason gotten by long study, observation, and experience, and not of every man's natural reason.

Although it is laid down that law is the perfection of reason, and it always intends to conform thereto, and that what is not reason, is not law, yet this must not be understood to mean that the particular reason of every rule in the law can at the present day be always precisely assigned; it is sufficient if there be nothing in it flatly contradictory to reason, and then the law will presume that the rule in question is well founded. See *Non omnium... Multa in jure... Lex plus laudatur*...

As to the latter portion of this maxim see *De similibus*...

Ubi est verborum ambiguitas valet quod acti est. Where words are ambiguous, that interpretation ought to prevail which is most in conformity with the purpose of the parties. See *Benigne faciendae*...

Ubi factum nullum ibi sortia nulla. Where there is no deed, there can be no consequences. See *Cogitationis poenam*...

Ubi jus, ibi remedium. Where there is a right, there is always a remedy. The maxim was the foundation of equity interfering in aid of the Common Law when (but for some technical defect) the Common Law itself would have given the remedy.

When the law gives a right or prohibits an injury, it also gives a remedy, *lex semper debet remedium*. If a man has a right he must have a means to vindicate and maintain it, and a remedy, if he is injured in the exercise and enjoyment of it; and, indeed, it is a vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal (*Per Holt, C. J., Ashby v. White*, 2 Ld. Raym. 953; *per Willes, C. J., Winmore v. Greenbank*, Willes, 577).

Every injury imports a damage, though it does not cost the party one farthing, for a damage is not merely pecuniary, but an injury imports a damage when a man is thereby hindered of his right. So a man shall have an action against another for riding over his ground, though it do him no damage, for it is an invasion of property, and the other has no right to come there. And it is no objection to say that this will occasion multiplicity of actions; for if men will multiply injuries, actions must be multiplied too, for every man that is injured ought to have his recompense (*Per Holt, C. J., Ashby v. White, supra*). A plaintiff whose right has been invaded is entitled to a remedy, whether any damage has occurred to him or not (*Ramphul Sahoo v. Misree Lall*, 24 W. R. 97).

The principle adopted by Courts of law is that the novelty of the particular complaint alleged is no objection, provided that an injury cognizable by law be shown to have been inflicted on the plaintiff (*Per Pratt, C. J., Chapman v. Pickersgill*, 2 Wils. 146; *Novello v. Sudlow*, 12 C. B. 177).

There is, however, a large class of cases in which a damage is sustained, but a damage not occasioned by anything which the law esteems an injury. Such damages are termed *damnum absque injuria* and for that no action can be maintained. See that title.

The maxim *ubi jus ibi remedium* has its limitation; and there are various cases in which either the maxim does not apply or at least the remedy for the wrong is not a civil action for damages.

Where an act is a grievance to the entire community (as an obstruction to a highway) no member of whom is thereby injured more than another, the mode of punishing the wrong-doer is usually by indictment only. It is only where he suffers some special damage differing in kind from that which is common to others or beyond that suffered by the public (as by falling into a pit in the highway) that a personal remedy for damages accrues to him (*Wilkes v. Hungerford Market Co.*, 2 Bing. N. C. 281; *Henley v. Mayor of Lyme Regis*, 2 Cl. & F. 331; *Winterbottom v. Derby*, L. R. 2 Exch. 316; *Harrop v. Hirst*, L. R. 4 Exch. 47; *Parvati Charan v. Kali Nath*, 6 B. L. R., Ap., 73; *Raj Luckee Debia v. Chunder Kant*, 14 W. R. 173; *Ramtarak Karati v. Dinanath Munde*, 7 B. L. R., A. C., 184; *Karim Baksh v. Budha*, 1 All. 249; *Sathu v. Ibrahim*, 2 Bom. 457; *Ranphal Rai v. Raghunandan*, 10 All. 498; *Poorbashi Pal v. Bhobun Chunder Dey*, 21 W. R. 408; *Geharaji v. Gunpati*, 2 Bom. 469; *Bhageeruth v. Chunder Churn*, 22 W. R. 462; *Bhageeruth v. Goluck Chunder*, 18 W. L. 58).

It frequently happens that when a wrongful act has been done to a person, he suffers a damage, but, although he may have a cause of action for the wrongful act, yet he cannot found any claim for compensation upon

that particular damage, because the connection between such damage and the wrongful act is insufficient; the damage is too remote. See *In jure, non remota*...

There are some cases, in which although a wrongful act has been done, yet on grounds of public policy, an action would not lie, as in cases of communications, which though slanderous, are privileged (See the Ind. P. C. XLV of 1860, s. 49², exceptions); the immunities from action which are enjoyed by the Crown (See *Rex non potest peccare*), and judges of Courts (See *De fide et officio*...). No action lies against a member of Parliament for slanders uttered in Parliament (*R. v. Abingdon*, 1 Esp. 228; *Dillon v. Balfour*, 20 L. R. Ir. 600; *Bradlaugh v. Gossett*, 12 Q. B. D. 271); or against advocates for slanders uttered in the course of a judicial inquiry (*Minster v. Lamb*, 11 Q. B. D. 588; *Mackay v. Ford*, 5 H. & N. 792; *Hodgson v. Scarlett*, 1 B. & Ald. 240; *Sullivan v. Norton*, 10 Mad. 28); or against a party or witness in legal proceedings (*Henderson v. Broomhead*, 4 H. & N. 579; 28 L. J. Exch. 360; *Revis v. Smith*, 18 C. B. 126; *Seaman v. Netherliff*, 2 C. P. D. 53; 46 L. J. C. P. 128; *Goffin v. Donnelly*, 6 Q. B. D. 807; *Chidambara v. Thirumam*, 10 Mad. 87; *Venkata v. Kotayya*, 12 Mad. 374; *Nathji v. Lalbhai*, 14 Bom. 97; *Dawan Singh v. Mahip Singh*, 10 All. 425; *Manjaya v. Sesha*, 11 Mad. 77).

As to injuries suffered from acts of State see *Roy n'est lié*...

Where a statute imposes a duty, it, without express words, gives an action for failing to perform that duty, and for wrongfully performing it (*Ponnusamy v. Collector of Madura*, 3 Mad. H. C. R. 35).

Applying the maxim to Courts of Equity, it may be observed that equity will not, by reason of a mere technical defect, suffer a wrong to be without a remedy. For example, in the case of a mortgager seeking to recover an estate or rent, the fact of the legal estate being in the mortgagee, which was a fatal defect at law, was no impediment in equity. The maxim must however be understood as referring to rights which are capable of being judicially enforced; for many real wrongs are still not remediable at all, either at law or in equity, as being, e. g., *damnum sine injuria*; also apparent wrongs, which are not wrongs at all, save in the imagination of the suitor, are of course not within the maxim, for *lex non facit delictorum votis*.

Ubi jus incertum, ibi jus nullum. Where the law is uncertain, there is no law. No legal decision can properly be made on vague and undefined enactments.

Ubi lex aliquem cogit ostendere causam, necesse est quod causa sit justa et legitima. Where the law compels a man to show cause, it is incumbent that the cause be just and legal.

Ubi lex est specialis, et ratio ejus generalis, generaliter accipienda est. Where the law

is special, and the reason of it general, it ought to be taken as being general.

Ubi lex non distinguit, nec nos distinguere debemus. Where the law distinguishes not, we ought not to distinguish.

Ubi major pars est ibi est totum. Where the greater part is, there the whole is. The only way of determining the acts of many is by the major part, or the majority; as the majority in parliament enact laws.

Ubi non est cogendi auctoritas, ibi non est parendi necessitas. Where there is no authority to compel, there is no necessity to obey.

Ubi non est directa lex, standum est arbitrio judicis, vel procedendum ad similia. Where there is no direct law, the opinion of the judge is to be taken, or references to be made to similar cases.

Ubi non est principalis, non potest esse accessorius. Where there is no principal, there cannot be an accessory.

Ubi nullum matrimonium, ibi nulla dos. Where there is no marriage, there is no dower.

Ubi quid generaliter conceditur, inest hæc exceptio, si non aliquid sit contra jus fasque. Where a thing is conceded generally, this exception arises, that there shall be nothing contrary to law and right. If an act which is the subject of a contract may, according to the circumstances, be lawful or unlawful, it will not be presumed that the contract was to do the unlawful act; the contrary is the proper inference (*Lewis v. Davison*, 4 M. & W. 654). If the act is capable of being done legally, either party may enforce the contract unless he wickedly intended that the law should be broken. It is a universal principle that every transaction in the first instance is assumed to be valid and the proof of fraud lies upon the person by whom it is imputed. See *Omnia præsumuntur rite*... *In facto quod*...

Ubi quis delinquit ibi punietur. Let a person be punished where he commits an offence.

Ubi supra. Where above mentioned; as above.

Ubi verba conjuncta non sunt sufficit alterutrum esse factum. Where words are not conjoined, it is enough if one or other be complied with. See *In disjunctis*...

Ulterius concilium. A further meeting.

Ulterius non vult prosecui. He wishes not to prosecute further; he will not prosecute further.

Ultima ratio. Ultimæ remedium. The last resource or expedient.

Ultima ratio regum. The last reasoning of kings, i. e., arms.

Ultimatum. A final proposition, which, if not accepted by the other party, breaks off the negotiations.

Ultima voluntas testatoris est perimplenda secundum veram intentionem suam. The last

will of a testator is to be thoroughly fulfilled according to his real intention. See *Benigna faciendæ*...

Ultimum supplicium. The last or extreme punishment; death.

Ultimus hæres. (Sc. L.) The last or remote heir, being he to whom the lands came by escheat, for want of lawful heir, *i. e.*, the lord of whom the lands are held, or the king.

Ultra. Beyond; further; additional.

Ultra mare. Beyond the sea.

Ultra posse non est esse; et vice versâ. What is beyond possibility cannot exist, and so contrariwise.

Ultrâ vires. Beyond authority; beyond power. As apposed to *Intra vires*.

Una arrura. One day's work at the plough.

Una bascata terra inclusa. As much land as one man can dig with a spade in a day.

Una persona vix potest supplere vices duarum. One person can scarcely supply the places of two.

Unâ voce. With one voice; unanimously.

Uncore prist. See *Tout temps*...

Undecim tales. Eleven such; being a supply of eleven men summoned to make up a deficient panel of jurors. See *Tales de*...

Unde deterioratus est. Whereof he is rendered worse.

Unde nihil habet. Whereof she has nothing. See *Dote unde*...

Unde petit iudicium. Whereof he seeks judgment.

Unde petit remedium. Whereof he seeks remedy.

Unicuique mora sua nocet. Everyone must bear the consequences of his own delay. See *Vigilantibus*...

Unigenitus. An only son; the only begotten.

Unitas personarum. The unity of persons, as that between husband and wife or ancestor and heir.

Unius cujusque enim contractus initium spectandum est et causa. The beginning and cause of every contract are to be considered.

Unius responsio testis omnino non auditur. That the testimony of one witness be not heard altogether sufficient, or admitted. See *Unus nullus*.

Universalis sunt notoria singularibus. Things universal are better known than things particular.

Universitates. Communities; universities; corporations.

Uno absurdo dato, infinita sequuntur. One absurdity being allowed, an infinity follows.

Uno flatu. With one breath. At the same moment and with the same intent.

Unques prist. Ever ready. See *Tout temps*...

Unum est tacere, aliud celare. It is one thing to be silent, another to conceal, *i. e.*, a

vendor, in most cases is not bound to disclose latent defects to an intending purchaser, but if he by fraudulent device conceals a defect which would otherwise be patent, the contract will be voidable by the purchaser. See *Aliud est celare*...

Unum et idem. One and the same.

Unum qui consilium daret, alterum qui contraheret, tertium qui receptaret et occideret, pari pena singulos esse obnoxios. That one who advises, another who aids, and a third who harbours and conceals, each of them is subject to a like punishment. See s. 107 of the Ind. P. C. XLV of 1860.

Unumquodque dissolvitur eodem ligamine quo ligatur. Every agreement should be dissolved by the same means, which rendered it binding. Every obligation is dissolved by the same solemnity with which it is created, *i. e.*, an obligation incurred by a deed can only be released by another deed. See *Nihil tam conveniens*...

Unumquodque eodem modo quo colligatum est dissolvitur, quo constituitur, destruitur. In the same manner in which anything is bound, it is loosened; in the same manner in which it is constituted it is destroyed. See *Nihil tam conveniens*...

Unumquodque est id quod est principalis in ipso. That which is the principal part of a thing is the thing itself.

Unumquodque ligamen dissolvitur eodem ligamine quo ligatur. Every contract or agreement ought to be dissolved by the same means, which rendered it binding. See *Nihil tam conveniens*...

Unumquodque principiorum est sibi met ipse fides; et perspicua vera non sunt probanda. Every principle is its own evidence; and plain truths are not to be proved.

Unus homo sustinet plures personas. One man can sustain or hold more characters. See *Quando duo*...

Unus nullus. The rule of evidence which obtained in the Civil Law that the testimony of one witness is equivalent to the testimony of none. But in our law, (with some exceptions, such as the attestation of wills by at least two witnesses, &c.) the rule is, *ponderantur testes, non numerantur*, witnesses are to be weighed, not counted. See *Testimonia ponderanda*...

Usance. Use; interest; usury.

Usque ad filum aque (or viæ). Even to the middle of the stream (or road). See *Aqua cedit solo*.

Usque ad inferos. Even to the lowest depth. See *Cujus est solum*...

Usque ad medium filum. Even to the middle line, *e. g.*, of a stream or road. See *Aqua cedit solo*.

Usque ad medium filum aque. Even to the middle of the stream. A phrase used to express half the land covered by a stream,

which, in the case of a stream not navigable, belongs to the proprietor of the adjoining bank. See *Aqua cedit solo*.

Usucapio. (Rom. L.) The mode of acquisition of property by prescription. The phrase extended both to moveable and immoveable property, and the possession might be either adverse or consistent.

Usucapio constituta est ut aliquis litium finis esset. The object of *usucapio* is to put an end to litigation.

Usufructarius. Usufructuary. One that has the use and reaps the profits of a thing.

Usura contra naturam est, quia usura sua natura est sterilis nec fructum habet. Usury is hostile to nature, because usury in itself is unfruitful and barren.

Usura dicitur quasi ignis urens. It is called usury as it were a fire burning.

Usura centesima. Interest at one per cent. per month.

Usura maritima. Maritime usury; bottomry. See *fœnus nauticum*.

Usu rem capere. To hold a property by custom.

Usurpatio. Usurpation. The using that which is another's; an interruption or disturbing a man in his right and possession, &c.

Usus. (Rom. L.) Use. A precarious enjoyment of land, corresponding to the tenancy at sufferance or at will of the English Law. The *usuarius* (i. e., tenant by *usus*) could only hold so long as the owner found him convenient.

Usus est dominium fiduciarum. Use is a fiduciary dominion.

Usus et status sine possessio potius differunt secundum rationem fori, quam secundum rationem rei. Use and estate, or possession, differ more in the rule of the Court than in the rule of the matter.

Usus fructibus. Use in benefits; the temporary use or profits of land or money.

Ususfructus. The right of reaping the fruits (*fructus*) of things belonging to others without destroying or wasting the subject over which such right extends. The right of use and profit, but not the property, of a thing.

Ut antiquis. As ancient; as of ancestry.

Ut antiquum. As ancient; as ancestral.

Uterinus frater. Uterine brother. A brother by the mother's side. See *Frater consanguineus*.

Ut feudum antiquum. As an ancestral fee.

Ut feudum maternum. As a maternal fee.

Ut feudum paternum. As a paternal fee.

Ut feudum striete novum. As a fee strictly new.

Utile per inutile non vitiatur. That which is useful is not vitiated by that which is useless. Clear words of grant are not affected by words which are obscure or superfluous. See *Non solent...*

In the construction of written instruments, and in pleadings, that matter which is mere surplusage may be rejected, and does not vitiate the instrument or pleading in which it is found, for *surplusage non nocet*. See *Falsa demonstratio...*

Where a matter was referred to the arbitration of three persons, the award of the three, or of any two of them to be final, and where the award purported on the face of it to be made by all the three, but was executed by two only, the third having refused to sign it, *held*, that the award must be considered to be good as the award of the two, for the statement that the third party had concurred might be treated as surplusage (*White v. Sharp*, 12 M. & W. 712).

Where the directors of an unincorporated and unregistered joint-stock company, issued promissory notes, binding the shareholders jointly and severally, *held*, that it was beyond their power to make the shareholders severally liable upon the notes, but that the expression by which the separate liability was created might easily be detached in construing it and be taken as not written, *pro non scripta* (*MacLae v. Sutherland*, 3 E. & B 1).

With respect to an indictment, an averment which is altogether superfluous, may be rejected as surplusage (*Reg. v. Parker*, L. R. 1 C. C. 225). See s. 238 of the Code of Crim. Pro. V of 1893, under the maxim *Omne majus...* If, however, an averment be part of the description of the offence, or be embodied by reference in such description, it cannot be rejected, and its introduction may, unless an amendment be permitted, be fatal.

Ut infra. As below; as under.

Uti possidetis. (Rom. L.) As you possess. A phrase indicating that two contracting parties are to continue to enjoy those things of which they are in actual possession. A treaty of peace by which the existing state of possession is maintained. Its opposite is the *status quo*, when both parties re-enter into the condition in which they stood before.

Uti rogus. Be it as you desire. A ballot thus inscribed, by which the Romans voted in favour of a bill or candidate. Abbrev. *U. R.*

Utlagatus est, quasi extra legem positus; caput gerit lupinum. An outlaw is, as it were, put out of the protection of the law; he bears the head of a wolf. See *Caput lupinum*.

Utlaghe. *Utlagatus*. An outlaw; as opposed to *inlagh*, a person within the protection of the law.

Ut lex moneat oportet priusquam foreat. It is right that the law should admonish before it strikes.

Ut liberum tenementum. As a free-holding; frank-tenement.

Ut poena ad paucos metus ad omnes perveniat. That the punishment may come to a few, that the dread of it may reach to all. It is an ancient maxim of criminal justice, that the few might be punished, and the many be deterred, through fear of the consequences, from the commission of crime.

Ut res magis valeat, quam pereat. That an act may avail, rather than perish. This is a rule of construction underlying that rule which directs such a construction to be put upon an ambiguous document (or ambiguous words therein) as that the document shall be and remain valid, and not be or become invalid from uncertainty, or illegality or other like cause. See *Benigna faciendæ...*

Ut summæ potestatis regis est posse quantum velit, sic magnitudinis est velle quantum possit. As the highest power of a king is to be able to do all he wishes, so the highest greatness of him is to wish all he is able to do.

Ut supra. As above mentioned.

Uxor furi desponsata non tenebitur ex facto viri, quia virum accusare non debet, nec deligere furtum suum, nec feloniam, cum ipsa sui potestatem non habet, sed vir. A woman married to a thief, shall not be held by his actions, for she cannot accuse her husband, nor discover the robbery or felony, since she has no power over herself but her husband has power over her.

Uxor non est sui juris, sed sub potestate viri, cui in vitâ contradicere non potest. A married woman (wife) has no power of her own, but is under the subjection of her husband, whom in his life-time she cannot contradict.

If a wife commit a felony, except treason or murder, or man-slaughter, in her husband's presence, the law presumes that she acted under his coercion and excuses her, which presumption may be rebutted by evidence; while, if in the absence of her husband she commit the felony—even by his order—her coverture is no excuse. If a woman commit bare theft or burglary by the coercion of her husband (or even in his company, which the law construes a coercion), she is not guilty of any crime, being considered as acting by compulsion, and not of her own will. But for crimes *mala in se*, not being merely offence against the laws of society, she is answerable, as for murder and the like. See *Uxor furi...*

V

Vacua possessio. Vacant possession, i. e., free and unburdened possession.

Vadiare duellum. To wage combat, where two contending parties, on a challenge, do give and take a mutual pledge of fighting.

Vadiatio duelli. Wager of duel or battle. A mode of trial in the nature of an appeal

to Providence, to give the victory to him who had the right.

Vadiatio legis. Wager of law. A proceeding which consisted in a defendant's discharging himself from the claim on his own oath, bringing with him at the same time into Court eleven of his neighbours (*compurgatores*) to swear that they believed his denial to be true.

Vadimonium. (Rom. L.) Personal bail or security.

Vadium. (Rom. L.) A pawn or pledge; mortgage; surety.

Vadium mortuum. A mortgage or dead pledge. See *Mortuum vadium.*

Vadium ponere. To take security, bail, or pledges, for the appearance of a defendant in a Court of justice.

Vadium vivum. A living pledge. See *Vivum vadium.*

Valeat quantum. Let it have its weight, small or great.

Valentia. Valor. Value or price of any thing.

Validiora sunt exempla quam verba; et plenius opere docetur quam voce. Precedents are more efficacious than arguments; and instruction is conveyed more fully by work than by words. Example is better than precept.

Valor beneficiorum. The value of an ecclesiastical benefice or preferment, according to which valuation the first fruits and tenths were collected and paid, and the clergy rated.

Valor maritagii. The avail (or value) of marriage, which wards in knight-service forfeited, in case they refused a suitable marriage, without disparagement or inequality, tendered by the lord. The value was deemed to be so much as a jury would assess, or any one would *bona fide* give to the guardian for such an alliance. Moreover, a ward who married without the lord's consent forfeited double the value of the marriage.

Vana est illa potentia quæ nunquam venit in actum. Vain is that power which never comes into play.

Vana voces populi non sum audiendæ, nec enim vocibus eorum credi oportet, quando aut noxium crimine absolvi aut innocentem condemnari desiderant. Idle popular rumour is not to be listened to, nor ought popular clamour to be trusted, either when it desires to acquit the guilty or condemn the innocent. See *Titis abut...* *Res inter alios acta...*

Vani timores sunt æstimandi, qui non cadunt in constantem virum. Those fears are to be counted vain which affect not a resolute man. See *Non suspicio...*

Vani timoris justa excusatio non est. A vain fear is not a good excuse.

Vassalus qui abnegavit feudum ejusve conditionem, exspoliabitur. A vassal who has disowned his feud or his covenant shall be deprived of his holding.

Vasto. A writ against tenants for term of life or years committing waste.

Vastum. Waste. A waste or common lying open to the cattle of all the tenants who have a right of commoning.

Vastum et estrepamentum facere. To make waste and spoil. See *Estrepamentum*.

Vectigal, origine ipsâ, jus cæsarum et regum patrimoniale est. Tribute, in its origin, is the patrimonial right of emperors and kings.

Vel causam nobis significes. Or that you show cause to us.

Venatio. Hunting.

Vendens eandem rem duobus, falsarius est. He is a fraudulent man who sells the same thing to two persons.

Venditio bonorum. See *Emptio bonorum*.

Venditioni exponas. That you expose to sale. A direction to the sheriff to sell goods seized under an extent. See *Extendi facias*.

Venditio per mutuam manuum complexionem. A sale by the mutual shaking of hands.

Venditor regis. The king's salesman; being the person who exposed to sale goods and chattels seized or distrained to answer any debt due to the king.

Veneficia. Poisonings.

Venia ætatis. A privilege granted by a prince or sovereign, in virtue of which a person is entitled to act *sui juris*, as if he were of full age.

Veniæ facilitas incentivum est delinquendi. Facility of pardon is an incentive to crime.

Venire. To come.

Venire de novo. To come anew. This was a form of motion for a new trial; the words implying that a new *venire facias* was directed to the sheriff.

Venire facias. That you cause to come. A writ in the nature of a summons to cause a party to appear, who is indicted for a petty misdemeanour, or on a penal statute. More fully, *venire facias ad respondendum*.

Venire facias tot matronas. That you cause so many matrons to come. A writ directing the summoning of a jury of matrons to see if a woman be with child.

Venire juratores facias. That you cause the jurors to come. A writ judicial awarded to the sheriff to cause a jury in the neighbourhood to come or appear, when a cause is brought to issue, to try the same.

Venire tam. To come as well.

Venit. He comes.

Ventre. Venter. Womb. It is used in law to distinguish the issue, where a man has

children by several wives; (said to be by a first or second venter).

Ventre inspiciendo. See *De ventre*...

Venue. The neighbourhood, from whence the the jury come to try causes.

Verba accipienda sunt cum effectu. ut sortiantur effectum. Words are to be received with effect, so that they may produce effect.

Verba accipienda sunt secundum subjectam materiem. Words are to be understood with reference to the subject matter.

Verba æquivoca ac in dubio sensu posita intelliguntur digniore et potentiore sensu. Words equivocal, and placed in a doubtful sense, are to be taken in their more worthy and effective sense.

Verba aliquid operari debent—debent intelligi ut aliquid operentur. Words ought to have some operation; they ought to be interpreted in such a way as to have some operation.

Verba chartarum fortius accipiuntur contra proferentem. The words of a charter are to be taken more strongly against the grantor.

A maxim of construction which is now practically exploded and is not applied until all other rules of construction fail (*Taylor v. St. Helen's Corporation*, 6 Ch. D. 264; 46 L. J. Ch. 857).

The maxim has been held to apply more strongly to deed-polls than to an indenture, because in the former case the words are those of the grantor only. But though a deed-poll is to be construed against the grantor, the Court will not add words to it, nor give it a meaning contradictory to its language (*Per Williams, J., Doe v. St. Helens R. Co.*, 2 Q. B. 373). See *Concessio versus... Donationes sunt*...

If a tenant in fee simple grants to any one an estate for life generally, this shall be construed to mean an estate for the life of the grantee, because an estate for a man's own life is higher than for the life of another. But if a tenant for life or in tail leases to another for life, without specifying for whose life, this shall be taken to be a lease for the lessor's own life; for this is the greatest estate which it is in his power to grant (*Per Bayley, J., Smith v. Doe*, 2 B. & B. 551; 22 R. R. 19). And, as a general rule, it appears clear, that if a doubt arises as to the construction of a lease between the lessor and lessee, the lease must be construed most beneficially for the lessee (*Dunn v. Spurrier*, 8 B. & P. 399; *per Bayley, J., Bullen v. Denning*, 5 B. & C. 847; 29 R. R. 431). See *Ambiguum pactum*...

With respect to simple contracts, the rule is that the party who makes any instrument should take care so to express the amount of his own liability, as that he may not be bound further than it was his

intention that he should be bound; and, on the other hand, that the party who receives the instrument, and parts with his goods on the faith of it, should rather have a construction put upon it in his favour, because the words of the instrument are not his, but those of the other party (*Per Alderson, B., Mayer v. Isaac*, 6 M. & W. 612). If a party giving a guarantee leaves anything ambiguous in his expressions, it has been said that such ambiguity must be taken most strongly against himself (*Hargreave v. Sme*, 6 Bing. 244; 31 R. R. 407; *Stephens v. Pell*, 2 Cr. & M. 710).

If a carrier give two different notices, limiting his responsibility in case of loss, he will be bound by that which is least beneficial to him. See *Munn v. Baker*, (2 Stark. 255; 17 R. R. 686.)

The principle under consideration does not seem to hold when a harsh construction would work a wrong to a third person, it being a maxim that *constructio legis non facit injuriam*. A recital in a deed or other instrument is in some cases conclusive, and in all cases evidence as against the parties who make it; and it is of more or less weight, or more or less conclusive against them according to circumstances. It is a statement deliberately made by those parties, which, like any other statement, is always evidence against the persons who make it. But it is no more evidence as against third parties than any other statement would be (*Brajeshware v. Budhanuddi*, 6 Cal. 268; 7 C. L. R. 9).

Also, where a question arises on the construction of the grant of the Crown, the rule under consideration is reversed; for such grant is construed most strictly against the grantee, and most beneficially for the Crown, so that nothing will pass to the grantee but by clear and express words (*R. v. Mayor of London*, 1 Cr. M. & R. 12). That which the Crown has not granted by express, clear, and unambiguous terms, the subject has no right to claim under a grant or charter; and in no species of grant does this rule of construction more especially obtain than in grants which emanate from, and operate in derogation of the prerogative of the Crown, *e. g.*, where a monopoly is granted (*Feather v. Reg.*, 5 B. & S. 283; *per Lord Stowell, The Rebeckah*, 1 Rob. 227). See *Concessio per regem*...

In construing grants by former Governments, the rule of English law as to the construction of grants to a subject by the Crown is the correct rule to be applied by the Courts in India. Where a *sanad* contained only the words, "The village of Manavali has been conferred on you as *inam*, to be enjoyed by you, your son and grandson, the Government dues of the village, *viz.*, the Koolbal Kookanoo (*i. e.*, all taxes and assessments) present taxes, and future taxes, together with the house-tax, but exclusive of haks due to hakdars, shall continue to be debited from year to year,

from the year next succeeding" it was held that the plaintiff's *sanad* did not operate as an alienation of the soil of the villages, or confer on him a proprietary title in it, and therefore gave the plaintiff no right to the timber growing upon the soil. The holder of such a *sanad* having only a right in the revenues, and none in the soil of the village, cannot, by thirty years' user, become the proprietor of the timber (*Vaman Janardan v. The Collector of Thana*, 6 Bom. H. C., A. C., 191).

A private right of fishery in a tidal navigable river must, if it exists at all, be derived from the Crown, and established by very clear evidence, as the presumption is against any such private right (*Prosunno Coomar Sircar v. Ram Coomar Parooey*, 4 Cal. 53; *Hari Dass Mal v. Mahomed Jaki*, 11 Cal. 484).

Verba cum effectu accipienda sunt. Words ought to be used so as to give them their effect.

Verba currentis monetæ, tempus solutionis designat. The words current money designate money current at the time of payment.

Verba dicta de personâ intelligi debent de conditione personæ. Words spoken of the person are to be understood of the condition of the person.

Verba generalia generaliter sunt intelligenda. General words are to be generally understood.

Verba generalia restringuntur ad habilitatem rei vel aptitudinem personæ. General words must be narrowed to the nature of the subject or the aptitude of the person. General words must be restrained according to the matter or person to which they relate.

All words, whether they be in deeds or statutes, or otherwise, if they be general, and not express and precise, shall be restrained unto the fitness of the matter and the person. Thus if I grant to A an annuity of £10 a year *pro concilio impenso et impendendo* (for past and future council), if A be a physician, this shall be understood of his advice in physic, and, if he be a lawyer, of his council in legal matters. And in accordance with the same principle a right of common of turbary claimed by prescription and user has been held to be restrained to those parts of the *locus in quo* in which it could be used (*Peardon v. Underhill*, 16 Q. B. 120).

The subject matter of an agreement is to be considered in construing its terms, and they are to be understood in the sense most agreeable to the nature of the agreement. If a deed relates only to a particular subject, general words in it shall be confined to that subject, otherwise they must be taken in their general sense (*Thorpe v. Thorpe*, 1 Ld. Raym. 235, 262), *generalia verba sunt generaliter intelligenda*, unless they be qualified by some special subsequent words, *e. g.*, the operative words of a bill of sale may be

restrained by what follows (*Wood v. Rowcliffe*, 6 Exch. 407). Though a release be general in its terms, its operation will, at law, in conformity with the doctrine recognized in Courts of equity, be limited to matters contemplated by the parties at the time of its execution (*Lyll v. Edwards*, 6 H. & N. 337).

In construing a deed of grant clear words of conveyance cannot be controlled by words of recital (*Mackenzie v. Duke of Devonshire*, L. R. 1896, A. C. 400). But if the words of conveyance are general and not specific, they may be controlled by a specific recital.

Where an Act of Parliament begins with words which describe things or persons of an inferior degree, and concludes with general words, the general words shall not be extended to any thing or person of a higher degree (*Arch. of Canterbury's Case*, 2 Rep. 46 a), that is to say, where a particular class (of persons or things) is spoken of, and general words follow, the class first mentioned is to be taken as the most comprehensive, and the general words treated as referring to matters *eiusdem generis* with such class (*Per Pollock, C. B., Lyndon v. Stanbridge*, 2 H. & N. 51; *per Lord Campbell, Reg. v. Edmundson*, 2 E. & E. 83; *Gibbs v. Lawrence*, 30 L. J. Ch. 170), the effect of general words when they follow particular words being thus restricted (*Reg. v. Cleworth*, 4 B. & S. 927).

Generally, in a document, the preamble usually recites what it is which the grantor intends to do, and this, like the preamble to an Act of Parliament, is the key to what comes afterwards. It is very common, moreover, to put in a sweeping clause, the object of which is to guard against any accidental omission; but in such cases it is meant to refer to estates or things of the same nature and description as those which have been already mentioned, and such general words are not allowed to extend further than what was clearly intended by the parties (*Per Lord Mansfield, Moore v. Magrath*, 1 Cowp. 12).

In construing powers-of-attorney, the special purpose for which the power is given is first to be regarded, and the most general words following the declaration of that special purpose will be construed to be merely all such powers as are needed for its effectuation. Where the owner of a ship, by power-of-attorney, constituted the master his agent and authorized him to raise or borrow upon the ship's papers such sums of money as he should deem necessary for the repair of the ship "and to act in the premises, as fully and effectually to all intents and purposes as I might or could do if personally present," *held*, that the master had no authority to sell or mortgage the ship (*Saousne Ezekiel Judah v. Addi Raja Queen Bibi*, 2 Mad. H. C. R. 77).

In construing a will general words may be understood in a restricted sense where it

may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense (*Ind. Suc. Act X of 1865, s. 70, and illustrations*).

Verba illata inesse videntur. Words referred to are considered to be incorporated. See *Verba relata*...

Verba intentioni, non è contra, debent inservire. Words should be subject to the intention, not contrary to it. See *Benignæ faciendæ*...

Verba ita sunt intelligenda, ut res magis valeat quam pereat. Words are to be so understood as that the subject matter may be rather preserved than destroyed. See *Benignæ faciendæ*...

Verba posteriora propter certitudinem addita, ad priora quæ certitudine indigent, sunt referenda. Subsequent words, added for the purpose of certainty, are to be referred to preceding words which need certainty. See *Ex antecedentibus*...

Verba relata hoc maxime operantur per referentiam ut in eis inesse videntur. Words referred to in an instrument have this especial operation that they are regarded as inserted in the clause referring to them.

Where, by a deed, a man bound himself to deliver "the whole of his mechanical pieces as per schedule annexed," the schedule was held to form part of the deed for the deed without it would be insensible and inoperative (*Weeks v. Maillardet*, 14 East, 568). If a contract of sale refer to an inventory, the entire contents thereof become incorporated with the contract (*Taylor v. Bullen*, 5 Exch. 779). In the same manner, if a contract or an Act refer to a plan, the plan forms a part of the contract or Act, for the purpose of which the reference is made (*North British R. Co. v. Tod*, 12 Cl. & F. 722; *Reg. v. Regent's Canal Co.*, 28 L. J. Ch 153). And a deed of conveyance made under the authority of an Act, and in the form prescribed thereby, must be read as if the section of the Act applicable to the subject matter of the grant and its incidents were inserted in it (*Eliot v. N. E. R. Co.*, 10 H. L. Cas. 333). By referring in a document signed by the party to another document, the person so signing in effect signs a document containing the terms of the one referred to (*Per Crompton, J., Fitzmaurice v. Bayley*, 9 H. L. Cas. 99).

If A writes to B that he will give so many rupees for B's estate, and at the same time states the terms in detail, and B simply writes back "I accept your offer," it may be shown by parol evidence of the circumstances under which B's letter was written, that the word "offer" refers to A's letter, and thereupon the two letters may be read as though incorporated the one with the other so as to constitute a sufficient memorandum of the contract signed by B (*Long*

v. *Miller*, 4 C. P. D. 450; 48 L. J. Q. B. 596; *Cane v. Hastings*, 7 Q. B. D. 125; 50 L. J. Q. B. 575; *Waman Ramchandra v. Dhondiba*, 4 Bom. 126; *Sufdar Ali Khan v. Lachman Das*, 2 All. 554).

Verba semper accipienda sunt in mitiori sensu. Words are always to be taken in their milder sense.

Verbatim. Word for word.

Verbatim et literatim. Word for word and letter for letter.

Verba utilia. Operative words.

Verba volant, scripta manent. Words fly, writings remain. See *Litera scripta*...

Verbi gratiâ. For the sake of a word, i. e., taking a word as an instance. For the sake of example. Abbrev. v. g.

Verbis obligatio. Verbal contract.

Verborum obligatio verbis tollitur. An obligation made by words is put an end to by words. See *Nihil tam naturali*...

Vere dictum. A true statement; a verdict.

Verdictum, quasi dictum veritatis; ut iudicium quasi juris dictum. The verdict is, as it were, the dictum of truth; as the judgment is the dictum of law.

Vergens ad inopiam. Verging on destitution; in insolvent circumstances.

Veritas, à quocunque dicitur à Deo est. Truth, by whomever pronounced, is from God.

Veritas convicii non excusat à calumnia. The truth of the abuse or censure does not excuse from libel. The greater the truth the greater the libel. In civil actions for libel or slander, the matter alleged must be both false and defamatory. The truth of the matter is an answer to the action, not because it negatives the charge of malice, but because it shows that the plaintiff is not entitled to recover damages in respect of an injury to character which he either does not or ought not to possess (*Per Little-dal, J., Mac Pherson v. Daniels*, 10 B. & C. 272; *Layman v. Latimer*, 3 Ex. D. 15). It is enough if the statement, though not accurate, is substantially true (*Alexander v. N. E. R. Co.* 11 Jur. N. S. 619).

The criminal liability however is different. Formerly, on an indictment, it was not allowable to give in evidence the truth of the libel. Now by an English Statute (6 & 7 Vic. c. 96, s. 6) it is so, provided it is also shown that it was for the public benefit that the slanderous matter charged should be published. It is the same by the Penal Code (XLV of 1860, s. 499, Excep. 1). But private life ought to be sacred; and a man will be liable to punishment for making imputations against the private character of another, where there is no public benefit from publishing such private vices, though they may exist. See Mayne's Commentaries on the I. P. C., s. 499.

Veritas demonstrationis tollit errorem nominis. Truth of the demonstration removes the error of the name. See *Nihil facit*...

Veritas est justitiae mater. Truth is the mother of justice.

Veritas nihil veretur nisi abscondi. Truth fears nothing but concealment. The characters of truth are plainness and frankness.

It is in the nature of fraud, on the contrary, to be evasive and mysterious. See ... *Dona clandestina... Fraus latet*...

Veritas nimium altercando amittitur. By too much alteration truth is lost.

Veritas nominis tollit errorem demonstrationis. Correct designation removes all error of description. See *Falsa demonstratio... Præsentia corporis*...

Veritas quæ minime defensatur, opprimitur. Truth which is not sufficiently defended, is overpowered.

Veritatem dicere. To speak the truth. See *Voire dire*.

Veritatem qui non libere pronunciat, proditor est veritatis. He who does not freely speak the truth is a betrayer of truth.

Versarius. Generally, the defendant in a private action. But the term is often applied to either party with respect to the other.

Vers le Roy celeste. Against the King of Heaven, i. e., God.

Versus. Against. Abbrev. v.

Verum est neque pacta neque stipulationes factum posse tollere, quod enim impossibile est neque pacto neque stipulatione potest comprehendî, ut utilem, actionem aut factum facere possit. No compact or stipulation can displace a fact, for what is impossible cannot be the subject of any compact or stipulation, so as to give rise to any equitable action, or any result.

See *Lex non cogit ad impossibilia*.

Verus dominus et verus tenens. The very lord and very tenant; they that are immediate lord and tenant one to another.

Vestigia. Vestiges; footsteps.

Vestita pacta. Agreements clothed with a consideration, as opposed to *nuda pacta*, naked or bare agreements.

Vestura terra. The crop or profit of land.

Vetera statuta. Ancient statutes, commencing with *Magna Charta* and ending with those of Edward II. See *Nova statuta*.

Vetitum narium. See *Repetitum narium*.

Veto. I forbid. A prohibition or the right of forbidding. Applied to the royal power of refusing assent to a bill in parliament.

Vetus dispositio pecunie. The ancient burying of money.

Vetus patrimonium domini. Ancient demesne. The tenure whereby all manors belonging to the Crown in the days of St. Edward and William the Conqueror, were held.

Vetustas pro lege semper habetur. Ancient custom is always regarded as law.

Vexata questio. An undetermined point, which has been often discussed. A much debated question.

Via servitus. Servitude of way. A right of way over another's land.

Via media. A middle course.

Via regia. The highway or common road, called the king's way; sometimes called the *via militaris*.

Via trita est tutissima. The customary path is the safest.

Via trita est via tuta. The customary path is the safe path.

Vi bonorum raptorum. (*Rom. L.*) The offence of rapina or robbery, *i. e.*, theft accompanied with violence. An action to recover damages for such an offence.

Vicarius non habet vicarium. A delegate cannot have a delegate. One agent cannot nominate or appoint another to perform the subject matter of the agency. See *Delegatus*.

Vice. In the place of.

Vice-comes non missit breve. The sheriff has not sent the writ.

Vice versa. The turn being reversed; reversely; contrariwise; on the contrary.

Vicina. Near; neighbouring.

Vicinetum. Neighbourhood; a word used specially with reference to the summoning of a jury from the neighbourhood.

Vicini viciniore præsuntur scire. Persons living in the neighbourhood are presumed to know the neighbourhood.

Vicis et venellis mundandis. An ancient writ directed to the local authorities of a town for the clean keeping of their streets and lanes.

Victus victori expensis condemnandus est. The vanquished is to be condemned in costs to the conqueror. See *Ubi damna...*

Vide. See. A word of reference. *Vide ante* or *supra* refers to a previous passage. *Vide post* or *infra*, to a subsequent one.

Videlicet. That is to say; to wit. A word used in pleading to precede the specification of particulars. To state a time or other matter in a pleading with the phrase "to wit or that is to say" is called *laying it with a videlicet*. See *Scilicet*.

Vide ut supra. See the preceding statement.

Vidimus. The same as *Inspecimus*.

Vidua regis. The king's widow, *i. e.*, she who after her husband's death, being the king's tenant *in capite*, could not, in the feudal law of tenures, marry again without the king's consent. See *Dote assignanda*.

Viduitatis professio. The making a solemn profession to live a sole and chaste widow.

Vi et armis. With force and arms. Words used in indictments, &c., to express the charge of a forcible and violent committing any crime or trespass.

Vi et armis, de uxore raptâ et abductâ. With force and arms his wife being ravished and carried away.

Vi factum id videtur esse, quâ de re quis cum prohibetur fecit; clam quod quisque cum controversiam haberet, habiturum se putaret fecit. The word violence applies when a man has done what the law prohibits; the word fraud when he has done something during a suit or in expectation of one.

Vigilantibus, non dormientibus, æquitas subvenit. Equity assists those who are vigilant and not those who are sleeping.

Vigilantibus, non dormientibus jura subveniunt. Laws come to the assistance of the vigilant, not of the sleepy. See *Currit tempus...*

Applying the maxim to Courts of equity, it may be observed that delay defeats equities. Equity aids the vigilant, not the indolent. A Court of equity, which is never active in relief against conscience or public convenience, has always refused its aid to *stale demands*, where the party has slept upon his right for a great length of time; for nothing can call forth the Court into activity but conscience, good faith and reasonable diligence (*Per Lord Camden, Smith v. Clay*, 3 Bro. C.C. 460, note). And it may be added, that even a comparatively short period of delay, not satisfactorily accounted for, also tells heavily against the plaintiff in equity in respect of an equitable right or for equitable relief.

The maxim refers to the important subject of limitation of actions, which exemplifies that general principle of law in pursuance of which the using of legal diligence is always favoured, and shall never turn to the disadvantage of the creditor (*Cox v. Morgan*, 2 B. & P. 412).

Where a statute directs that a claim shall be made within a specified time, the right will be forfeited by omission to assert it within that time, and in such a case the maxim under consideration has been held forcibly to apply (*Doe v. Jefferson*, 2 Bing. 118). But the rule does not apply where the party is disabled from bringing an action (See *Contra non valentem...*); and also where he has, by means of fraud, been kept from the knowledge of his right to bring an action, or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him (*Ind. Lim. Act XV of 1877. s. 18*).

But the equitable doctrine of laches and acquiescence does not apply to suits for which a period of limitation is provided by the Limitation Act (*Rama Rau v. Raja Rau*, 2 Mad. H. C. R. 114; *Ahmed Mahmud v. Adjein Doopy*, 2 Cal. 323). Mere laches or indirect acquiescence, short of the period prescribed by the statute of limitations, is no bar to the enforcement of a

right absolutely vested in the plaintiff at the time of suit. *Semble*—The doctrine of acquiescence or laches will apply only to cases, if such there are, in which they can be regarded as a positive extinguishment of right. When they go merely to the remedy, the Courts have no power arbitrarily to substitute an extinguishing prescription different from that established by the legislature (*Peddammuthulaty v. N. Timma Reddy*, 2 Mad. H. C. R. 270).

Plaintiffs sued defendants for arrears of rent. Defendants alleged that part of the land had been taken up by Government, 24 years previously, for the purpose of railway, and they claimed an abatement on that ground. *Held*, that the Limitation Act does not in terms prevent a defendant from setting up such a defence; but that the great delay in this case, combined with other circumstances, disentitled the defendants to any relief in a Court of Equity (*Ram Narain v. Poolin Behari Lal*, 2 C. L. R. 5).

The Courts of this country have no power to refuse relief on the ground of mere delay where the plaintiff establishes a right not affected by limitation (*Ramphul Sahoo v. Misree Lal*, 24 W. R. 97).

If A constructs a road across B's land, B can sue within the ordinary period of limitation, and no consent can be inferred from the fact that B did not sue immediately after the commencement or completion of the road (*Huroo Sunduree Debia v. Ram Dhun Bhutacharjee*, 7 W. R. 276).

Held, that in determining the amount of damages the question whether the plaintiff has unnecessarily delayed bringing his suit, and so allowed his claim to mount up to a sum far in excess of the principal money originally advanced, may be taken into consideration as a reason for not making the original rate of interest the basis on which to assess such damages (*Bishen Dayal v. Udit Narain*, 8 All. 486).

For cases in which a man knowingly sleeps over his rights and allows a stranger to build on his property under the belief that it is his (*i. e.*, the stranger's) property, see *Quicquid plantatur solo*....

As to the effect of laches by a purchaser, see *Caveat emptor*.

Vitis et modis. By ways and means. A service of process *vitis et modis*, in the ecclesiastical Courts, is a service by such means as will bring it to the notice of the person; a substituted instead of personal service.

Vi laica removenda. A writ that lay where two persons contended for a church, and one of them entered with a great number of laymen and held the other out *vi et armis*. He that was held out had this writ, directed to the sheriff, that he remove the lay force.

Villānum socagium. A base holding; a villein socage.

Villa regia. A title given to those country villages where the king's of England had a royal seat, and held the manor in their own demesne.

Villenagium. Villenage. A servile kind of tenure belonging to land or tenements, whereby the tenant was bound to do all such services as the lord commanded, or were fit for a villein to do.

Villenagium privilegiatum. A privileged villenage.

Vi metusque. Force and fear. Any contract or act extorted under the pressure of force (*vis*), or under the influence of fear (*metus*), is voidable on that ground.

Vim vi repellere licet, modo fiat moderamine inculpatæ tutelæ; non ad sumendum vindictam, sed ad propulsandam injuriam. It is lawful to repel force by force, so as it be done with the moderation of blameless defence; not to take revenge, but to repel injury.

Vim vi repellere omnia jura clamant. All laws declare that we may repel force by force. This may be done in the exercise of the right of private defence, but the right in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence (*Ind. P. C. XLV of 1860, s. 99, cl. 4*).

Vinculum juris. (*Rom. L.*) The obligation of law, *i. e.*, a bond whereby one party becomes or is bound to another to do something according to law.

Vinculum matrimonii. The bond of marriage. See *A vinculo*...

Vinculum personarum ab eodem stipite descendit. A succession of persons descended from the same stock. See *Consanguineo*.

Vindicatio. (*Rom. L.*) A real action claiming property for its owner. See *Condictio*.

Vindices injuriarum. The avengers of wrongs.

Violatio fidei. Breach of promise; a breaking or violating a man's word or undertaking.

Violenta præsumptio aliquando est plena probatio. Violent presumption is sometimes full proof. See *Præsumptio violenta*...

Violentia. Violence

Viperina est expositio quæ corrodit viscera textus. It is a poisonous exposition which corrodes the vitals or substance of the text.

Viperina expositio. Poisonous construction.

Vir et uxor censentur in lege una persona. Husband and wife are considered one person in law.

The English law considers marriage in no other light than a civil contract. By marriage the husband and wife are one person in law; that is the very being or legal existence of the woman is suspended during the marriage; or at least is incorporated and consolidated into that of her husband, under whose being, protec-

tion, and cover, she performs everything, and is therefore called in our law-French a *feme covert* (*femina viro cooperta*); is said to be *covert baron*, or under the protection and influence of her husband, her *baron* or lord; and her condition during marriage is called her *coverture*.

The *Common Law* treated husband and wife, for most purposes, as one person, giving, with exceptions comparatively unimportant, the whole of a woman's property to her husband for his absolute use. *Equity*, however, from very early times, by the doctrine of "separate uses," "trusts," and "equity to a settlement," very largely modified the *Common Law* in favour of the wife; and the *Statute Law*, first in 1870 (33 & 34 Vic. c. 93), and afterwards in 1882 (45 & 46 Vic. c. 75), has by the Married Women's Property Acts almost completely abolished the property distinction between an unmarried and a married woman. See also the Indian Suc. Act X of 1865, s. 4, and the Married Women's Property Act III of 1874. These, however do not apply to Hindus, Mehomedans, Buddhists, Sikhs or Jains.

The general rule is that a husband is not bound by his wife's contracts unless made by his authority express or implied. If any articles are supplied to the wife which are not necessities, the legal presumption is that the husband did not assent to his wife's contract.

As to *ante-nuptial* debts, a wife continues liable for such debts to the extent of her separate property, and the husband is also liable for the same to the extent of property acquired by him from his wife (45 & 46 Vic. c. 75, ss. 13 to 15; Act III of 1874, s. 9).

As to criminal acts committed by the wife, see *Uxor furi... Uxor non est...*

At *Common Law* the husband was, until 1891, considered to have a right to the personal custody of his wife (*Ex parte Cochran*, 8 Dowl. 680; *Reg. v. Mead*, 2 Kenyon 280; *Manby v. Scott*, 1 Siderf. 109; *Bridg*, 233). But in 1891, the Court of Appeal, in *Reg. v. Jackson* (1891, 1 Q. B. 671) disregarded all authorities and dicta pointing in this direction, and discharged a wife from the custody of her husband who had seized her by force upon her refusal to live with him in compliance with a decree for restitution of conjugal rights.

In trials of any sort, the husband and wife under English law, were not allowed to be evidence for or against each other; partly because it is impossible their testimony should be indifferent, but principally because of the union of person; if they were admitted to be witnesses for each other, they would contradict the maxim of law *nemo in propria causa testis esse debet*; and if against each other, they would contract another maxim *nemo tenetur seipsum*

accusare. But where the offence is directly against the person of the wife, this rule has been usually dispensed with (*Lord Audley's Case*, 3 Howell, St. Tr. 402).

But the law has since been changed in England (9 & 10 Vic. c. 95; 14 and 15 Vic. c. 99; and 16 & 17 Vic. c. 83) and the parties, and husbands and wives of parties are now considered as competent witnesses. See also s. 120 of the Ind. Evi. Act which is to the same effect.

As the wife is capable of holding separate property of her own it follows that a husband may be liable for theft of property which is hers absolutely, and in the same manner a wife may be convicted of theft, or abetment of theft, of her husband's property (*Reg. v. Khatabai*, 6 Bom. H. C., Cr. Ca., 9). A Hindu woman who removes from the possession of her husband, and without his consent, her *palla* or *stridhan*, cannot be convicted of theft, nor can any person who joined her in removing it be convicted of that offence (*Reg. v. Natha Kalyan*, 8 Bom. H. C., Cr. Ca., 11).

A Hindu female has her own peculiar property called *stridhan* which is exclusively hers and at her own disposal, except where it consists of land given to her by her husband, in whom the dominion therein continues to vest. She is of course to be guided by her husband in the disposal of her property.

A Mehomedan female has the absolute disposal of her own property, consisting of inheritance, dower, &c. It is optional with her to enforce her claim to dower at any time and even by means of a law suit, provided it is payable on demand, and not on death or divorce.

Virgo intacta. Pure virgin.

Virilia. The privy members of a man, to cut off which is an offence, though the party consents to it. See the Ind. P. C. XLV of 1860, ss. 87, and 320 (1).

Viri magnæ dignitatis. Men of great dignity.

Vir militans Deo non implicetur secularibus negotiis. A man fighting for God ought not to be involved in secular business.

Virtute ejus. By virtue of whom or what. A clause in a pleading justifying an entry upon land, by which the party alleged that it was in virtue of an order from one entitled that he entered.

Virtute officii. By virtue of his office.

Vis. Force; violence.

Vis legibus est inimica. Violence is inimical to the laws.

Vis major. Irresistible force. Inevitable accident. See *Actus Dei... Dieu et son...*

A lease contained the clause—"In regard to the rent aforesaid we take upon ourselves the risk of flood and drouth, of death and flight, of alluvion and diluvion, of profit and loss. In no case shall we be able to

claim a reduction in the rent, nor will it be open to you to demand more on account of alluvion, &c. During the lease, part of the land was taken up by Government for the purpose of a railway and compensation was paid to the lessor therefor. The lessee claimed a deduction of rent for the land taken away from him. *Held*, that such a claim was not intended by the parties to be within the clause of the lease, but the land having been taken from the whole area demised, not by natural causes, but by *vis major*, the lessee was entitled to a deduction from the rent on showing that there were tenants of his on the land who, before the land was taken by Government, paid rent to him which they had now ceased to pay (*Watson & Co. v. Nistarini Gupta*, 10 Cal. 544).

Visus. View or inspection.

Vitium clerici nocere non debet. A clerical error ought not to hurt.

Viva pecunia. A phrase anciently used for live cattle which were received as money upon most occasions.

Viva voce. In a living voice; by word of mouth; orally. Oral testimony publicly delivered.

Vivum vadium. A living pledge. This is when a man borrows a sum, suppose £200 of another, and grants him an estate as of £20 per annum to hold till the rents and profits shall repay the sum so borrowed. This is an estate conditioned to be void as soon as such sum is raised, and the land or pledge is, in this case, said to be *living*; it subsists and survives the debt, and immediately on the discharge of that, results back to the borrower. This sort of pledge is distinguished from *mortuum vadium*, which see.

Vix ulla lex fieri potest quæ omnibus commodam sit, sed si majori parti prospiciat utilis est. Scarcely any law can be made which is beneficial or applicable to all; but it is useful if it benefit the greater majority, or regard the greater part. See *Ad ea quæ...*

Vocatio. A calling.

Vocatio in jus. (Rom. L.) Citation to law; citation into Court for trial.

Voce. Word; discourse.

Vociferatio. An outcry; hue and cry.

Voire (voir) dire. To say what he has seen; to speak the truth; examining a witness on oath before he gives evidence in the cause as to whether he shall get or lose by the matter in controversy, and allowing his testimony if he appeared a disinterested party. Now abolished. See *Initialia testimonii*.

Volenti non fit injuria. That to which a man consents cannot be considered an injury. Damage suffered by consent is not a cause of action. A man is not wronged who wilfully does an act.

In actions founded on tort the leave and license of the plaintiff to do the act complained of usually constitutes a good defence by reason of this maxim; and, as a rule, a man must bear loss arising from acts to which he assented.

Thus in cases of adultery, the husband's consent to the wife's adultery will go in bar of the action, whereas his improper conduct, not amounting to consent, only will go in reduction of damages (*Duberley v. Gunning*, 4 T. R. 651). On the same principle a husband has no right to turn his wife away on account of her adultery at which he connived; he cannot complain of that to which he was a willing party (*Wilson v. Glossop*, 20 Q. B. D. 354; 57 L. J. Q. B. 161).

Where a man was hurt by a spring-gun while he trespassed in a wood after being warned by the owner that there were spring-guns set therein, *held*, that the maxim applied (*Ilott v. Wilkes*, 3 B. & Ald. 304; 22 R.R. 400); and it seems that the application of the maxim is justifiable if the plaintiff received his injuries under circumstances leading necessarily to the inference that he encountered the risk of them freely and voluntarily and with full knowledge of the nature and extent of the risk; in other words, if the real cause of the plaintiff's running the risk and receiving the injuries was his own rash act (*Thomas v. Quartermaine*, 18 Q. B. D. 685; 56 L. J. Q. B. 340; *Yarmouth v. France*, 19 Q. B. D. 647; 57 L. J. Q. B. 7; *Smith v. Baker*, L. R. 1891, A. C. 325; 60 L. J. 683).

Where, after the passing of a decree, the defendant with the consent of the plaintiff remained in possession of and worked the cotton press, which was the subject matter of the suit, and then a fire broke out in the press without the negligence of the defendant, *held*, that the defendant was not liable to the plaintiff for the loss occasioned thereby. The maxim *volenti non fit injuria* applied to the circumstances of the case (*Jamesfi v. Ebrahim*, 13 Bom. 183).

With respect to contracts, either of the parties to a contract, with the consent of the other party, may break it without becoming liable as for a breach; and the maxim is sometimes cited in cases where a person consents by the terms of a binding contract to give up rights which he might otherwise assert. See *Conventio vincit... Modus et conventio...*

The maxim is also applied where a person has, voluntarily and with full knowledge of the facts, paid money, which he was not under a legal obligation to pay (*Remfry v. Butler*, E. B. & E. 887). For example, he cannot maintain an action to recover money so paid by him in discharge of a debt barred by the statute of limitations (*Per Lord Mansfield, Bize v. Dickason*, 1 T. R. 287; *per De Grey, C. J., Farmer v. Arundel*, 2 W. Bl. 825), or of a debt which

was void by reason of his infancy (*Valentini v. Canali*, 24 Q. B. D. 166; 59 L. J. Q. B. 74). See *Ignorantia facti*...

It is an established principle of law that money paid under compulsion of law cannot be recovered back as money had and received. The defendant had brought a previous action against the plaintiff for goods sold. The plaintiff had paid for the goods and obtained the defendant's receipt; but being unable to find it at the time, and having no other proof of payment, he could not defend the action and had to pay the money again. He afterwards found the receipt and thereupon brought an action for money had and received, to recover back the amount of which payment has thus been wrongfully enforced. *Held*, that as the money had been paid under legal process, it could not be recovered back again (*Marriot v. Hampton*, 7 T. R. 260; 2 Esp. 546). Plaintiff owed defendant a judgment-debt. He paid the debt, but not through the Court. Defendant then fraudulently applied to the Court to execute the decree, and the Court being debarred by the provisions of the Civil Procedure Code from recognizing payment made otherwise than through it, executed the decree by making the plaintiff pay again the sum decreed. Plaintiff sued to recover the amount overpaid. *Held*, by the majority of the Court (Scotland, C. J., and Innes, J., dissenting) that such a suit is not maintainable (*Arunachella Pillai v. Appavu Pillai*, 3 Mad. H. C. B. 188, citing *Marriot v. Hampton*, *Supra*).

But this rule is subject to the qualification that the money recovered under the decree or judgment cannot be recovered back whilst the decree or judgment remains in force. The rule rests on the ground that the original decree or judgment must be taken to be subsisting and valid until it has been reversed or superseded by some ulterior proceeding. If it has been so reversed or superseded, the money recovered under it ought certainly to be refunded (*Shama Persad v. Hurro Persad*, 10 Moo. I. A. 203).

As for money paid under an illegal contract, see *In pari delicto*...

Volenti non fit injuria, si dolo sit inductus ad consentiendum. If a man be induced to consent to a fraud, he receives no wrong, as he desired it.

Voluntas. We will. The first word of a clause in the king's writs of protection and letters patent.

Voluntarius daemon. A willing fiend; a voluntary devil; a drunkard.

Voluntas donatoris in chartâ doni sui manifeste expressa, observetur. The will of the donor manifestly expressed in his deed of gift, is to be observed. See *Cujus est dare*...

Voluntas donatoris observetur. The will of the donor should be observed. See *De donis*.

Voluntas facit quod in testamento scriptum valeat. It is intention which gives effect to

the wording of a will. See *Benignaz faciendæ*...

Voluntas in delictis, non exitus spectatur. In crimes the will, and not the consequence, is looked to. See *Actus non facit*...

Voluntas regis est in curiâ, non in camerâ. The will of the king is in his Court of justice not in his chamber.

Voluntas reputatur pro facto. The will is to be taken for the deed. This is a maxim which can be applied (if at all) with only the greatest care in English Law, the nearest approach to any application of it having been under the cognate maxim *scribere est agere* in the case of an alleged treason. But in English Law, a man is always deemed to have intended that which is the natural consequence of his act; and the intention may even be inferred from the overt act, and that is probably the true meaning of this maxim. Certainly the maxim does not mean (nor does the English Law hold) that the mere intention to do a criminal act, not being accompanied with any accomplishment thereof or step towards (i. e., overt act of) accomplishment, is punishable at all. See *Cogitationis poenam*...

Concerning the first and most heinous of the several kinds of treason, where a man doth compass or imagine the death of the Sovereign, it is worthy of notice that an apparent exception presents itself to the doctrine that the bare intent of an individual is not punishable by our law. But although in treason the substantive offence or *corpus delicti* is constituted by the mere secret intention of compassing the king's death, an overt act, though not essential to the abstract crime, is still essential to the offender's conviction. The intention must be manifested by some overt act tending towards the accomplishment of the criminal object. Hence, if conspirators meet together, and consult how to kill the king, though they do not then fall upon any scheme for that purpose, this is an overt act of compassing his death and so are all means made use of, be it advice, persuasion or command, to incite or encourage others to commit the fact or to join in the attempt. On like grounds, to provide weapons or ammunition for the purpose of killing or deposing the sovereign is a palpable overt act of treason in imagining his death (*R. v. Hardy*, 7 East, P. O. 60; 24 Howell St. Tr. 199; *Ind. P. C. XLV* of 180, s. 122).

Bare words, indeed, not relative to any act or design would not suffice to constitute an overt act of treason; they are at the worst no more than indications of the malignity of the heart. Words, however, may safely be relied upon to explain the meaning of an act. Hence, where O, being beyond sea, said "I will kill the king of England if I can come at him," and the indictment, after setting forth the above words charged that O came into England for the purpose indicated by them, it was

held that C might on proof of above facts rightly be convicted of treason; for the traitorous intention evinced by the words uttered converted on action innocent in itself into an overt act of treason. The deliberate act of writing treasonable words is moreover to be regarded in a different light from a mere uttering of them and may constitute an overt act, for *scribere est agere*; but even in this case the bare words are not the treason. And the preponderance of authority is in favour of the rule, that writings not published cannot constitute an overt act of treason.—*Broom's Com. Law*.

Voluntas testatoris est ambulatoria usque ad extremum vite exitum. The will of a testator is ambulatory until the last moment of his life. The testator has power to withdraw any previous will made by him and to make another will. This power ceases at his death, and the will, or the last will, takes effect only at such death. See *Omne testamentum morte...*

Voluntas testatoris habet interpretationem latam et benignam. The intention of a testator has a broad and benignant interpretation.

Voluntas ultima testatoris est perimplenda secundum veram intentionem suam. The last will of a testator is to be fulfilled according to his real intention.

Voluntatis nostræ justa sententia de eo, quod quis post mortem suam fieri velit. The true meaning of a will is that which each person desires to be performed after his death. See *Benigne faciendæ...*

Votum. A vow or promise.

Vox emissa volet litera scripta manet. Words spoken pass away—written letter remains. The effect of a written contract cannot generally be altered or substantially varied by parol proof. See *Litera scripta... Expressio unius...*

Vulgaris purgatio. A vulgar purgation or ordeal. A trial by ordeal. See *Judicium Dei*. Distinguished from the canonical purgation, which was by the oath of the party.

W

Waiviatum. Waif; goods found but claimed by nobody; that of which everyone waives the claim.

Warrandice. (Sc. L.) A warranty.

Warrantia. A warranty.

Warrantia chartæ. A writ formerly brought by a tenant or defendant against one who had enfeoffed him, with a clause of warranty, in the lands, the subject of the action. By this writ he might have compelled the feoffor or his heirs to warrant the land into him, or pay the value of the lands, if he (the tenant or defendant) lost the same.

Warrantia custodiæ. A writ judicial which lay for him who was challenged to be a ward to another in respect to land said to be holden by knight-service, which land, when it was bought by the ancestors of the ward, was warranted free from such thralldom or burden of wardship. It lay against the warrantor and his heirs to make good the warranty.

Warrantia diei. A writ which lay for a man who having had a day assigned him to appear in Court, could not come at the day, being employed in the king's service. It was directed to the justices that they might not record him in default for that day.

Warrantizare est defendere et acquietare tenentem, qui warrantum vocavit, in seisinâ suâ; et tenens de re warranti excoambium habebit ad valentiam. To warrant is to defend and insure in peace the tenant, who calls for warranty, in his seisin; and the tenant in warranty will have an exchange in proportion to its value.

Warrantor potest excipere quod querens non tenet terram de quâ petit warrantiam, et quod donum fuit insufficientis. A warrantor may object that the complainant does not hold land of which he seeks the warranty, and that the gift was insufficient.

Weregild. The price of redemption for homicide; an amercement in expiation of murder, payable to the king, the lord of the fee, and the relatives of the person slain.

Withernam. A distress made by way of reprisal. See *Capias in withernam*.

Wittena-gemote. The general council of great and wise men to advise and assist the sovereign in the time of the Saxons.

Wreccum maris. A wreck at sea.

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Hasty justice in the step-mother of misfortune. 192

Let law prevail, though justice fail. 192

Let justice be done, though the heavens should fall. 192

Justice ought to be unbought, because nothing is more hateful than venal justice; full, for justice ought not to halt or be shut out; and quick, for delay is a kind of denial. 253

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Justice truly preventing is better than severely punishing. 287

Justice strengthens the throne. 259

Justice is to be denied to none. 259

Justice is neither to be denied nor delayed. 259

To no one should we delay justice. 332

To no one should we sell, or deny or delay right or justice. 332

Justice knows neither father nor mother; justice regards truth alone. 259

The law cannot be defective in dispensing justice. 266

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No injustice is to be presumed in the law. 331

The power of the king is to execute justice. 370

The question must refer to the laws, and not to persons. 387

He who decides anything, one party being unheard, though he should decide right, does wrong. 52, 395

The greatest charity is to do justice to every person, and at any time whenever it might be necessary. 466

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King

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Land

It is not permitted to build upon one's own land that which may be injurious to another. 23

Whatever is built on the soil goes with the soil. 23, 396, 462

Whoever is the owner of the soil, it is his even to the firmament, and to the middle of the earth. 111

All that is built on the soil, belongs to, or follows, the soil. 339

That which is built on the ground devised passes to the devisee. 412

Sterile land, by the force of the term, is barren land bearing no fruit. 472

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Aids depend upon the kindness of the tenants and not upon the will of the lords. 53

Aids are granted of favour and not of right. 53

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- becomes extinct either through deficiency or crime. 143
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- Heirs are to be married without disparagement. 205.
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- Homage repels perquisition. 209
- No man can be at once tenant and landlord. 308
- Feudal services which are incapable of division are to be performed in whole by each individual. 385
- Personal services follow the person. 454
- A vassal who has disowned his feud or his covenant shall be deprived of his holding. 489
- To warrant is to defend and insure in peace the tenant who calls for warranty, in his seisin. 508

Law

- The laws are adapted to those cases which most frequently occur. 17
- Law ought to be made with a view to those cases which happen most frequently, and not to those which are of rare or accidental occurrence. 254
- Laws cannot be so worded as to include every case which may arise, but it is sufficient if they apply to those things which most frequently happen. 311
- The legislature takes no notice of that which is only of occasional occurrence. 421
- Scarcely any law can be made which is beneficial or applicable to all; but it is useful if it benefit the greater majority. 503
- That which is equal and good is the Law of Laws. 27
- Nice pretences and distinctions of law are not laws. 41
- It is not suitable to good faith to dispute about the niceties of law. 64
- Simplicity is the best quality of legislation. 264
- Application is the life of a rule. 42
- The reason of the law ceasing, the law itself ceases. 79
- Law is the dictate of reason. 267
- The law is the more praised when it is approved by reason. 273
- The law always intends what is agreeable to reason. 273
- Reason is the soul of law; the reason of the law being changed, the law is also changed. 424
- Reason may be alleged where law is defective. 425

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- Custom leads the willing; law compells the unwilling. 93
- The law never allows anything contrary to truth. 102
- When the state is most corrupt then are the laws most multiplied. 104
- Good laws arise from evil manners. 173
- The law pays no regard to trifling matters. 128
- The law cares not about trifles. 272
- The laws sometimes sleep, never die. 148
- Excess in law is reprehended. 163
- Excess in any thing is reprehended at Common Law. 163
- The law arises from the fact. 172
- Experience by various acts makes law. 177
- By various acts experience framed the law. 362
- Let law prevail though justice fail. 192
- Laws are made in vain unless to those subject and obedient. 199
- Vainly does he seek the help of law who offends against law. 199
- That is not always honourable which the law allows. 209, 320
- The law forbids not many things, which yet it has silently condemned. 295
- The laws are made lest the stronger should be altogether uncontrolled. 221
- Useless labour, and without fruit, is not the effect of law. 244
- Law is the highest reason which commands those things which are useful and necessary, and forbids what is contrary thereto. 267
- Law is a sacred sanction, commanding what is honourable, and forbidding what is contrary. 267
- The law commands not useless things. 272
- The law obliges no man to do vain or useless things. 270
- The law does nothing vainly; commands nothing vainly. 270
- The law requires not what is vain and useless. 421
- The laws themselves require that they should be governed by right. 244
- The rules of law are these, to live uprightly, not to injure another, and to give every one his own. 253.
- Law is the rule of right; and whatever is contrary to the rule of right is an injury. 255
- Law enforced to strictness sometimes becomes the severest injustice. 258
- Extreme law is extreme punishment. 466
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- The laws of England are threefold; common

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Laws are imposed not on words but on things. 263

The law of England is a law of mercy. 266

The law of England suffers not an absurdity. 266

The law aims at perfection. 266

Law is from the eternal. 267

The law is the soul of the king, and the king is the soul of the law. 267

The king protects law, and the law protects right. 442

The law is the safest leader of the army of judges. 267

Law is a straight line or a line of right. 267

Law is the safest helmet; under the shelter of the law none is deceived. 267

The law works harm to no one; does injury to no one. 270

The law purely penal, binds only as to penalty not as to fault; the mixed penal law complexes both to fault and penalty. 273

The law speaks to all with the same mouth. 274

The slavery is wretched where the law is vague or unknown (or uncertain). 290

Miserable is the state of things, where the law is vague and uncertain. 431

Where the law is uncertain there is no law. 481

No man out of his own private reason, ought to be wiser than the laws. 301

To insist on a rule of public law is not to over-reach. 316

There is no rule which may not fail. 319

The laws consist not in being read, but in being understood. 319

A reason cannot be given for all those laws which have been established by our ancestors. 321

That system of law is best which confides as little as possible to the discretion of a judge. 347

Things introduced contrary to the reason of law, ought not to be drawn into a precedent. 385

The wisdom of law cannot be valued by money. 447

The interpretation of the law has the force of law. 452

If you depart from the law you will wander and all things will be uncertain to every body. 454

The solemnities of law are to be observed. 462

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A legacy is confirmed by the death of a testator, in the same manner as a gift from a living person is by delivery alone. 261

A legacy is a gift bestowed by will. 261

Legitimacy

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Letters patent

If the suggestion be not true, the letters patent are void. 461

Libel

It is not just or proper to condemn him who describes a bad man; for it is useful and beneficial that the misdeeds of bad men should be exposed. 160

An injury is done to him to whom a reproachful thing is said, or concerning whom an infamous song is made. 230

A speech relating to a person is to be understood as relating to his condition. 453

The truth of the abuse or censure does not excuse from libel. 495

Liberty

The laws of England in all cases of liberty, are favourable. 39

Things favourably considered in law are treasury, dower, life, liberty. 72, 189

When facts are doubtful, presumption will be in favour of dower, liberty, innocence, possession, the debtor, and the criminal at the bar. 222

Everything will be presumed in favour of life, liberty and innocence. 223

We may do what by law we are allowed to do. 212

He is to be adjudged impious and cruel who does not favour liberty. 216

Liberty is the power of doing that which the law permits. 275

Liberty is an inestimable thing. 275

Liberty is that natural faculty which permits everyone to do anything he pleases except that which is restrained by law or by power. 275

Nothing is permitted which is contrary to reason. 312

That which is permitted at a loss is not permitted. 319

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Time runs against the slothful and those who slight their own rights. 116

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Every plaint and every action for injuries is limited within certain times. 344
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Litigation

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It is the duty of a good judge to determine litigations, lest one law suit arise out of another. 81
It concerns the State to end law suits. 65
It is for the public good that there should be an end of litigation. 176
It concerns the State that there be an end to law suits. 241
Good faith does not suffer the same thing to be exacted twice. 68, 64
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Let not strife be immortal, while those who strive are mortal. 300
By too much altercation truth is lost. 314, 496
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Logic

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The less is contained in the greater. 230, 282
In the greatest power there is the smallest license. 230
The part is contained in the whole. 243
The greater always contains in itself the less; the less is included in it. 338
The more worthy contains in itself the less worthy. 339
When more is done than ought to be done that too seems to be done which still remains to be done. 391
He who says all excludes nothing. 407
What avails in one of two similar things, will avail in the other. 416
The whole is preferable to any single part. 476
That part is bad which accords not with the whole. 477
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They cannot be said to lose a thing who never had it as their own. 326.
Let every man bear his own loss, rather than take away from the benefits of another. 469
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Maiming

Mayhem is incipient homicide. 282
Mayhem is the least among great crimes; and the greatest among small ones. 282
Mayhem is the mutilation of a member; and can be said to take place when a man is injured in any part of his body so as to be useless in fight. 282
Where blood is spilled, the case is unpardonable. 299

Majority

Where the greater part is there the whole is. 482
That which is the principal part of a thing is the thing itself. 484

Marriage

Consent, not concubinage, constitutes marriage. 94, 95, 336
Those who are below marriageable years, cannot give their consent to matrimony. 95, 96
A marriage portion is either free or bound to service. 285
The connection of male and female is by the law of nature. 285
Marriages ought to be free. 286
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The desires of women are more mature than those of men. 286
The presumption is always in favour of the validity of a marriage. 451
Where there is no marriage there is no dower. 482
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Master and Servant

Guilt follows the principal. 330
The master of a house is held responsible for the offence of another whether it be his servant or child. 354
Let the principal answer. 435
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A maxim is so called because its dignity is greatest, and its authority the most certain, and because universally approved by all. 286
Principles prove, they are not proved. 377
Every principle is its own evidence; and plain truths are not to be proved. 362, 484

Merger

That which is united to (or merged in) another is extinguished; nor can it be any more independent. 215
The name of the duke is merged in the name of the king. 315

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 In nearly all respects a person under age is protected by the law. 232
 Malice makes up for age. 283
 A minor can make his condition better, but by no means worse. 287
 A minor under seventeen years of age is not admitted to be an executor. 289
 A minor before majority cannot act in a case of property, not even agree; it should be deferred until majority. 289
 A minor cannot be guardian to a minor, for he is presumed to direct others badly who knows not how to direct himself. 290
 A minor cannot give evidence upon oath. 290
 A minor is not bound to reply during his minority; except as a matter of favour in a cause of dower. 290, 325
 A minor who is under twelve years of age cannot be attained, nor placed without the law, because before such age he is not under any law nor in a decennary. 290
 Minors bind others, but are not bound themselves. 336
 What avails in the minor will avail in the major; and what does not avail in the major will not avail in the minor. 416, 419
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A common mistake makes a right or becomes law. 89
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Money

Money is the just medium and measure of commutable things, for by the medium of money, a convenient and just estimation of all things is made. 293
 Money is the measure of things to be exchanged. 335
 The value of a thing is estimated according to its worth in money, but the value of money is not estimated by reference to the thing. 434
 The wisdom of law cannot be valued by money. 447

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Moveable property inheres in the bones of the owner. 291

Moveables follow the person. 291

Things which belong to the person ought not to be separated from the person. 385

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Natural rights

By the law of nature, these things are common to mankind, the air, running water, the sea, and consequently the shores of the sea. 159
 Rivers and ports are public, therefore the right of fishing is common to all. 195
 The laws of nature are immutable or unchangeable. 251
 By the law of nature it is not just that anyone should be enriched by the detriment or injury of another. 252
 No person ought to gain by another person's loss. 305
 No one ought to be enriched by another's disaster. 306
 No one ought to be enriched from the misfortune of another. 306
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 You are not to do an evil that thence good may arise. 319
 Natural right is that which has the same force among all men. 257
 The law regards the order or course of nature. 273

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 Nature takes no leap, so neither does law. 297, 459
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Greater and less do not change the nature of a thing. 282
 Things which are prohibited by the nature of things are confirmed by no law. 387

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 That which is otherwise not permitted, necessity permits; and necessity makes a privilege as to private rights. 215
 In cases of extreme necessity all things become common. 218
 The law of necessity is the law of time, *i. e.*, of the moment. 270
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 Necessity makes that lawful which otherwise is not lawful. 298
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 Necessity overcomes law; it derides the fetters of law. 299
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 Whatever is necessary is lawful. 414
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A gross negligence is held equivalent to fraud or intentional wrong. 113
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 A fault binds its own authors. 113
 Want of skill is reckoned as a fault or negligence. 216
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Oath

In law none are believed than those that are sworn. 226
 An oath is indivisible; it is not to be received as partly true and partly false. 251
 To swear is to call God to witness, and an act of religion. 251
 In judgment, credit is given to a sworn witness. 252
 The form of taking an oath differs in language, agrees in meaning; for it ought to have this sense, that the Deity is invoked. 257

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There is no tighter link than an oath among mankind. 318
 Every oath ought to be of certain knowledge. 339
 An oath has in it three component parts, truth, justice, and judgment; truth is requisite in the party swearing, justice and judgment in the judge administering the oath. 445
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Obedience

He is not in any fault who is bound to obey. 154
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 No crime is greater than disobedience. 332
 Obedience is the essence of law. 336
 An office or duty ought to be injurious to no one. 337
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 Where there is no authority to compel, there is no necessity to obey. 482
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Obligation

An obligation is a tie of law, which binds us to render something according to the rules of our civil law. 336
 The obligation is greater, if one give a thing at once, but less if it be given only after a time. 365
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It is the offence which produces shame and not the scaffold. 80
 Guilt makes equal those whom it stains. 184
 It is better to suffer every ill than to consent to ill. 288
 All crimes done openly are lighter. 339
 Things which are of the smaller guilt are of the greater infamy. 387
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Origin

The origin of a thing ought to be inquired into. 350

Outlawry

He who is placed beyond or out of the law is civilly dead. 182
 An outlaw is, as it were, put out of the protection of the law; he bears the head of a wolf. 486
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Ownership

Lordship cannot be in suspense. 143
 A right can never die. 149
 That which belongs to no one belongs to the king. 417

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What belongs to no body is given to the occupant by natural right. 417

That which is once mine cannot be more fully mine. 421

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Facility of pardon is an incentive to crime. 489

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Parentage

He to whom the people is father has not a father. 110

Filiation cannot be proved. 194

The presumption is always in favour of the legitimacy of children, and filiation cannot be proved. 451

It is presumed for legitimacy. 373

A son is part of his father. 194

A son in the mother's womb is part of the mother's vitals. 194

An heir is a second self, and a son is a part of his father. 206

The father, mother and son are one flesh. 354

Children are of the blood of their parents, but the father and mother are not of the blood of the children. 384

The law of England rules that the offspring shall always follow the condition of the father, never that of the mother. 266

His own issue follows the father. 354

The offspring follows the dam. 353

If your horse get my mare with foal, the foal is not your property but mine. 459

Parent is a name general for every kind of relationship. 351

He is the father whom the marriage declares so. 353

The authority of a parent should consist in affection, not in barbarity. 354.

He who is in the womb is held as already born. 404

If a man leave his wife pregnant, he shall not be considered to have died without children. 461

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Parliament

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A thing divisible may be for ever divided. 141

Partnership

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Under the law of partnership, one partner is not bound to pay a debt contracted by the other, unless the moneys have been appropriated to the common stock. 252

Every debt which has been contracted during the continuance of a partnership must be paid by the firm generally, notwithstanding the partnership be afterwards dissolved. 339

If any sum of money is due to an entire body or partnership it is not due to the individual members; nor do those individuals owe that which is due by the entire body. 460.

No person is forced against his will into a partnership. 307

Many partners are like one body, inasmuch as they have one right. 353, 364

The partner of my partner is not my partner. 461.

Patron

A patron is he to whom appertains the right of presentation to a church. 23

Endowment, building and land make a patron. 354

Payment

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Peace

It benefits the State that peace be preserved in the kingdom, and that whatever things are averse to peace be prudently declined. 241

Violence and injury are especially opposed to peace. 350

Penalty

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Perfection

Nothing is perfect while anything remains to be done. 312

That is perfect which wants nothing according to the measure of its performance or nature. 359

Nothing is invented and perfected at the same moment. 313

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Performance

It is always to be considered as done, which the fault of another has prevented. 231

The place governs the act. 280

It matters not which of (two) equivalents happens. 324

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Perjury

They are perjured who, preserving the words of an oath, deceive the ears of those who receive it. 360

A foolish oath, though false, makes not perjury. 445

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Physician

They are considered offences, if a physician has neglected a cure, has performed an operation badly on any one, or has given him improper medicine. 113

Piracy

A pirate is an enemy of the human race. 363

Place of contract

Every person is understood to have contracted in that place where he has obliged himself to pay. 102

The law of the place governs the act. 270

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The order of pleading being preserved, the right is preserved. 349

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Pledge

A creditor who permits the sale of the thing pledged, loses his security. 106

Possession

It is one thing to possess, and another thing to be in possession. 33

A possessor in good faith is only liable for that which he himself has obtained. 64

A bona fide possessor makes the profits which have been consumed his own. 64

Good faith gives the possessor the same rights as a valid title, unless the law prevents it. 64

Chattel's justly possessed cannot be lost. 72

Where both parties are equally in fault, the law favours him who is actually in possession. 114

Where the right is equal the condition of the party in actual possession shall prevail. 217

In equal right or wrong, he in possession shall prevail. 217

Where both parties have equal rights, the party in possession is deemed the stronger. 234

In equal fault the condition of the possessor is the more favourable. 236

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Right is said to have its beginning in possession. 143

Long possession is the law of peace. 280

Long possession is like the right of possession and takes away an action from the true owner. 280

No one can change the motive or cause of his possession. 308

One who never did possess, cannot be considered to have ceased to possess. 322

Possession is, as it were, the position of the foot. 366

A deprivation presupposes a possession. 378

He who has frequently transferred his possession is to be condemned as if he were in possession, because his fraud is equivalent to possession. 401

A thing abandoned becomes the property of him who gets first possession of it. 434

Land lying unoccupied is given to the occupant. 472

We can retain possession by intention alone but cannot obtain it without a corporal act also. 439

Rights of dominion are transferred without title or delivery by usucaption, to wit, long continued and quiet possession. 476

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Possibility

Possibility is never revived after the dissolution of execution. 369

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Power

He who has the jurisdiction of loosening has the jurisdiction of binding. 408

Every one is the moderator and arbiter of his own affairs. 430

Power should follow justice, not precede it. 453

Supreme power can dissolve itself. 468

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The practice of the judges is the interpreter of the laws. 374

The practice is taken from the law, not the law from the practice. 429

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 An argument from a like case avails in law. 47
 Of things dissimilar the reason is dissimilar. 459
 From similars to similars, we are to proceed by the same rule. 133
 In like cases the judgment is the same. 133
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 In like subject matters the rule of law should be the same. 234
 Nothing in law is more intolerable than to rule a similar case by a diverse law. 312
 Of things equal, the reason is the same, and the same is the law. 352
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 Precedents are more efficacious than arguments. 488
 Things derogatory to the common law are not to be drawn in a precedent. 386
 That which has been received against the reason of the law is not to be drawn into a precedent. 413
 Where there is no direct law, the opinion of the judge is to be taken, or references to be made to similar cases. 482
 We must judge by the laws, not by the examples or precedents. 246
 The latter decisions are the stronger in law. 247
 Credit is given to the latter decisions. 247
 If the written law be silent, that which is drawn from manners and customs ought to be observed, and if that is in any manner defective, then that which is next and analogous to it; and if that does not appear, then the law which Rome uses should be followed. 273
 It is better to go to the fountain head than to follow the rivulets. 288, 447

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 Nothing is prescribed except what is possessed. 312
 Prescription is a title derived from use and time, taking substance from the authority of the law. 372
 There is no prescription against procuration. 379
 None can have a servitude over his own property. 438
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Presumption

The induction is good from what has been to what may be. 1
 A bond found in the possession of the debtor is presumed to be paid. 81
 A debtor is not presumed to give. 120
 A gift is not presumed. 147
 No one is presumed to give. 309
 A donation is not to be presumed. 322
 As to things non-apparent and those non-existing, the rule is the same. 131
 False in one thing, false in all. 188
 Bad in one respect, bad in all. 284
 He who is false in one instance, is presumed false in another. 288
 He who is once bad is presumed to be bad always in the same degree. 410
 When the testimony of a witness is false in one part, it is presumed to be false in all other parts. 475
 He who flies judgment confesses his guilt. 189
 In an action which partakes both of good and bad, the law looks more to the good than to the bad. 223, 337
 In things favoured, what does good is more regarded than what does harm. 223
 An injury is not presumed. 230
 Evil is not to be presumed. 284
 No one is presumed to be bad. 309
 Every one is presumed good; and in doubtful cases the presumption shall be ever in favour of the defendant or the accused. 411
 Every thing will be presumed as against a wrong doer. 231
 All things are presumed against a wrong-doer. 340
 From lapse of time all things are presumed to have been done rightly and properly. 164
 All things are presumed to be legitimately done until the contrary is proved. 341
 All things are presumed to have been rightly and duly performed until the contrary is proved. 341
 All things are presumed to have been done rightly. 343
 No one is presumed to prefer the posterity of another to his own. 309
 From prior acts the posterior are presumed. 369
 From prior acts we presume posterior acts. 374
 From the posterior acts we presume the prior. 377
 The extremes being proved the mean is presumed. 378
 It is presumed for the negative. 373
 Presumption is always for the negative. 451

Presumption—(contd.)

Strong presumption is full proof. 374
 Strong presumption is valid in law. 374
 Violent presumption is sometimes full proof. 500
 Acts done in the king's Court are presumed to be rightly done. 385
 That which ought to be done is easily presumed. 414
 Presumption is always for the sentence. 451
 A presumption will stand good until the contrary is proved. 463
 Where it is a question of obligation, we ought to lean to a negative; where it is a question whether a debtor should be liberated, to an affirmative decision. 479
See DEATH, DEBTOR AND CREDITOR, DOUBT, FRAUD, INNOVATION, KING, LIBERTY, MARRIAGE, PARENTAGE.

Prince

See SOVEREIGN.

Principal and Accessory

See ACCESSORY AND PRINCIPAL.

Principal and Agent

One man cannot incur a liability through another (unless the latter is his agent). 32
 A person may conduct an action either in his own name or in that of another, for instance, if he is an advocate, a guardian or an agent. 467
 He who has authority to do the more important act, shall not be debarred from doing that of less importance. 110
 A man having a power may do less than such power enables him to do. 317
 A delegated power cannot be delegated. 127
 A delegate cannot delegate. 127, 497
 The derivative power cannot be greater than the primitive. 133
 A mandatary or agent cannot exceed the limits placed upon him. 284
 No one can do through another what he cannot do through himself. 308
 What I cannot do myself, I cannot do by another. 418
 The authority of an agent to contract for his principal rests on the consent of his principal. 386
 When anything is commanded, everything by which it can be accomplished is also commanded. 388
 He who acts through another acts through himself. 402
 He who gives the order is taken to be himself the doer. 407
 He who does anything though the instrumentality of another, is considered as doing it himself. 407
 He who for me does anything, appears to do it by me. 409
See LOGIC.

Principal and Surety

See DEBTOR AND CREDITOR.

Principles

See ARGUMENTS.

Prison

A prison ought to be given for the custody, not the punishment of persons. 71
 A prison is ordained not for the sake of punishment, but of ward. 71
 It concerns the State that prisons be in security. 241

Private defence

The laws permit to take up arms against armed persons. 47
 It is lawful to repel force by force, so as it be done with the moderation of blameless defence; not to take revenge, but to repel injury. 500
 All laws declare that we may repel force by force. 500
 Whatever any one does in defence of his person, that he is considered to have done legally. 414
 He who in defence of his life commits violence is pardoned for the act. 215
 He who may immoderately use his own right is guilty of homicide. 215
 The fear must be such as a man feels in danger of life or maim of body. 325
 Those fears are to be esteemed vain which do not affect a firm man. 407, 475, 488
 Vain fear is not good excuse. 488
See NECESSITY.

Privation

Every privation presupposes former enjoyment. 344

Privilege

A privilege is a personal benefit and dies with the person. 378
 Privilege is, as it were, a private law. 378
See PUBLIC GOOD.

Prohibition

When any thing is prohibited directly it is prohibited also indirectly. 389
 When any thing is prohibited, every thing which tends towards it is also prohibited. 389

Proof

See BURDEN OF PROOF, EVIDENCE.

Proviso

A proviso is to provide for the present or future, not the past. 383

Provocation

He who sins first makes the strife. 408
See PUNISHMENT.

Public good

It is for the public good that no one use his property badly. 176

Public good—(contd.)

It is to the advantage of the State that everyone uses his property properly. 241
It is prohibited for any to do that on his own property which may injure another's; and so use your own property that you do not hurt another's. 383

Individual welfare shall, in cases of necessity, yield to that of the community. 218
Public rights are to be preferred to private. 251

Private loss or inconvenience is compensated by public good. 378

A privilege avails not against public good. 378

Private good yields to public. 378

The public good must be preferred to private advantage. 384

The law will more readily tolerate a private mischief than a public evil or inconvenience. 266

Public rights ought not to be promiscuously decided in analogy to private rights. 251

A public right cannot be altered by the agreements of private persons. 258

A private agreement does not derogate from public right. 350, 351, 378

The agreement of private persons cannot affect public right. 108

The safety of the people is the highest law. 265

The safety of the people is the supreme law. 445

The safety of the State is the supreme law. 446

The public act of the majority is considered the act of all. 427

Many things contrary to the rule of argument are introduced into the Common Law for common utility. 295

No one could be dragged or turned out of his own dwelling-house. 306

Every great example has some portion of evil which is compensated by the public utility. 338

The prince and the republic can take away my property for a just cause. 376

When there are many counsellors there is safety. 446

See CONSTRUCTION, LITIGATION, NECESSITY.

Public policy

See VOID CONTRACTS.

Punishment

Something is conceded, which otherwise would not be conceded, lest an injury should remain unpunished. 32

Slaves and freemen are punished differently for the same offences; he who has committed an offence against a master or parent is punished otherwise than if he had committed it against a stranger; against a magistrate, than if against a private person. 32

Punishment—(contd.)

Hear the other side, i. e., no one should be condemned unheard. 52, 395

No one should be condemned unheard and unsummoned, unless for contumacy. 307

Care should be taken that the punishment do not exceed the guilt; and that some men may not suffer for offences which, when committed by others, are allowed to pass with impunity. 76

Those sinning secretly are punished more severely than those sinning openly. 82

The punishment should be proportioned to the crime. 118

No freeman shall have amercement imposed upon him for a small offence, otherwise than according to the mode of his offence, and for a great offence, according to the magnitude of the offence. 275

Punishment is to be measured by the extent of the offence. 365

When vice increases, punishment ought also to increase. 106

Punishment increases with increasing crime. 172

The infliction of punishment increases with multiplied crime. 296

Where transgression is multiplied, the infliction of punishment should be increased. 477

A delinquent provoked by anger ought to be punished more mildly. 128

Offences should be most severely punished which are most difficult to provide against. 157

In capital causes an offence might be excused or extenuated, which will not have the same effect in civil injuries. 164

Infamy arises from the crime, not from the punishment. 164

Impunity affords a continual bait to the delinquent. 216

Impunity always invites to greater crimes. 216

Evil deeds ought not to remain unpunished, and impunity affords continual incitement to the delinquent. 283

The hope of impunity holds out a continual temptation to crime. 463

It would be a most inhuman thing to condemn in the full amount a man who has already been stripped of all his fortune. 225

In all penal sentences, age and imprudence should be borne in mind. 232

In that which any one offends, in that, according to law, he is to be punished. 237

It concerns the State that evil deeds should not remain unpunished. 240

He threatens the innocent who spares the guilty. 289

Punishment—(contd.)

- He who spares the guilty punishes the innocent. 407
- Laws charge themselves with punishing overt acts only. 265
- Money being restored does not set free the party offering 275
- A slip of the tongue ought not lightly to be subjected to punishment. 281
- The smallest bodily punishment is greater than any pecuniary one. 289, 386
- The very slightest corporal punishment falls more heavily, than the most weighty pecuniary punishment. 344
- The higher classes are more punished in money; but the lower in person. 315
- What a man cannot pay with his purse he must suffer in person, lest anyone should sin with impunity. 407
- No one is to be twice punished or vexed for the same fault or offence. 302
- No person is to be twice disturbed for the same cause. 302
- No one is punished for the wrong or crime of another. 309
- No one is punished unless for some injury, deed or default. 309
- A person may not be punished differently than according to what the sentence enjoins. 316
- Good men hate sin through love of virtue, bad men through fear of punishment. 337
- Let offences bind only the transgressors, nor let the dread proceed farther than the offence be discovered. 355
- Punishment follows crime with a slow foot. 355
- The divine punishment for perjury is destruction, the human punishment is disgrace. 360
- Punishment should rather be softened than aggravated. 365
- Punishment should be restrained. 365
- That the punishment of a pregnant woman condemned, be deferred until she be delivered. 419
- We surrender the forms of law rather than allow injuries to remain unpunished. 425**
- A traitor is punished that one and not all may perish. 439
- Where there is culpability, the punishment ought to be submitted to. 478
- Let a person be punished wher he commits an offence. 482
- It is right that the law should admonish before it strikes. 486
- That the punishment may come to a few that the dread of it may reach to all. 487
- See DOUBT, DRUNKENNESS, EXECUTION, JUDGE, TREASON.

Purchaser

See VENDOR AND PURCHASER.

Ratification

- In offences against the law, a ratification is equal to a command. 230
- All acts that require a fixed purpose are incomplete unless performed with a full and assumed knowledge. 243
- A subsequent ratification or confirmation has a retrospective effect, and is equivalent to a prior command. 344, 424
- If a man ratifies what has been done in his behalf, he is liable to an action such as would for an agent against his principal. 451

See CONFIRMATION, ELECTION.

Reason

- They who seek reason for everything subvert reason. 409
- Reason is a ray of divine light. 424
- Reason and authority are the two brightest lights of the world. 424
- See CUSTOM, LAW.

Rebellion

- Wicked rumours spread abroad, are the forerunners of rebellion. 216

Release

- A bond is released by the same formalities with which it is contracted. 157
- In the same way in which any thing is constituted, in that way it is dissolved. 157, 422, 484
- Everything is naturally dissolved in the same manner in which it is bound. 297, 419
- Nothing is so agreeable to natural equity as that everything should be dissolved by the same means by which it was bound. 313
- Nothing is so natural as to dissolve anything in the way in which it was bound together; therefore an obligation made by words is put an end to by words; obligation of mere consent is dissolved by contrary consent. 313, 330, 495
- By the same powers by which a man is bound, by that he is released. 422
- Written obligations are superseded by writing, and an obligation of a naked assent is dissolved by assent to the contrary. 448
- Every agreement should be dissolved by the same means which rendered it binding. 484

Relevancy

- That cannot be proved which, if proved, is irrelevant or immaterial. 322
- See EVIDENCE.

Religion

- Where the Divinity is insulted, the case is unpardonable. 299
- Human things never prosper where divine things are neglected. 335
- The highest law is that which supports religion. 466

Remedy

From the highest remedy to the lower action there is neither ingress nor assistance. 51

A new remedy is to be applied to a new case. 231

A beneficial law affords a remedy for a similar case. 266

The law will always give a remedy. 273

Where the ordinary remedy fails, then recourse must be had to an extraordinary one, but recourse is never had to the extraordinary where the ordinary is sufficient. 478

Recourse is never had to what is extraordinary, till what is ordinary fails. 335

We must have recourse to what is extraordinary when what is ordinary fails. 426

Where the law gives a right, it gives a remedy to recover. 281

Where there is a right, there is always a remedy. 479

That which is without remedy avails of itself if there be no fault in the party seeking to enforce it. 419

Renunciation

Every man may renounce the benefit of a stipulation inserted in his favour. 252

Every man may renounce a benefit which the law has conferred upon him. 339

Any one can renounce a right introduced for himself. 405

See ACTIONS, BENEFIT.

Repeal of Enactments

A clause which excludes abrogation is inoperative from the beginning. 82

When a law is repealed, that very clause is at the same time repealed which specifies that it ought not to be repealed. 114

A derogatory clause does not impede things from being dissolved by the same power by which they are created. 319

It is an everlasting law, that no human and positive law shall be perpetual; and a clause that excludes abrogation is invalid from its commencement. 360.

Later laws prevail over those which precede them. 97

Subsequent laws repeal prior contrary laws. 263

A later law takes away the effect of a prior one. 273

It is no new thing that the statutes of a prior date should give place to those of a later period. 318

Things subsequent supersede things prior. 369

Privileges established by one law are abrogated by the provisions of an opposite law. 100

Laws are abrogated by the same means by which they were made. 251

All things which are contracted by law perish by a contrary law. 341

Repeal of Enactments—(contd.)

The custom of making and annulling laws is most dangerous. 262

The law of England cannot be changed but by Parliament. 266

Resignation

Resignation is a spontaneous relinquishment of one's own right. 431

Res inter alios acta

No one ought to be burdened by the act of another. 307

The condition of one man ought not to be made worse by the act of another. 317

The right of others is doubtless not to be injured by private agreements. 378

Transactions among strangers ought to hurt no man, but may benefit. 385

Things done between strangers ought not to injure a party. 431

See RES JUDICATA.

Res judicata

The defence of *rei judicata* hods good where the same question is brought again between the same parties. 162

The deed of one should not hurt another. 184

Matters decided between third parties do not affect strangers. 483

It concerns the State that things adjudicated should not be rescinded. 240

An award that has been made is received as a just precedent. 246

Judgments are, as it were, the words of the law, and are received as truth. 247

A thing adjudicated is received as true. 434

What is adjudicated is taken for truth. 452

Judgment is always taken for truth. 250

No person should be twice disturbed for the same cause. 302

A sentence against marriage never becomes or operates as a *res judicata*. 452

See LITIGATION, RES INTER ALIOS ACTA.

Restitution

A person wrongfully deprived of his property is entitled to restitution before all others. 48, 463

Where money has been paid by mistake, or for a cause which the law does not support, or which has been followed by no effect, an action may be brought for its recovery. 172

No one is considered entitled to recover that which he must give up to another. 199, 326

He who has recovered his own property, even from one who is not his debtor, cannot be forced to restore it. 411

No one is obliged to pay back what anyone has been made to pay by way of penalty. 413

See CONSTRUCTION, PUNISHMENT.

Retrospective effect

The weight of a past offence is never increased by a subsequent fact. 27, 335

An invalid clause is not rendered valid by a remote cause arising after the event. 83

A bad foundation ruins the work. 120

Laws should be construed as prospective, not as retrospective, unless they are expressly made applicable to past transactions, and to such as are still pending. 262

The law looks forward and not backward. 273

A new law ought to impose form on what is to follow, not on the past. 327

Every new enactment should affect future, not past times. 339

That which was a useless institution at the commencement cannot grow strong by an after fact. 384

Things bad in principle at the commencement seldom achieve a good end. 386

That which is bad in its commencement, improves not by lapse of time. 412

That which is void from the beginning cannot become valid by lapse of time. 416

That which has no valid beginning has not a good end. 417

See CONFIRMATION, FACTUM VALET, MARRIAGE.

Revenue

The king's treasure (the public revenue) is at once the bond (or security) of peace and the sinews of war. 475

See LIBERTY.

Reversion

A reversion of land is, as it were, the return of the land to the possession of the donor or his heirs after the termination of the estate granted. 439

Revocation

An act the completion of which depends on the will of the parties may be revoked; but if it depends on the consent of a third person, or on a contingency, it cannot be revoked. 14

He who can institute can also abrogate. 111

It matters not whether a revocation is made by words or deeds. 324

Nothing said or done in the heat of passion is irrevocable until perseverance shows that it was the deliberate purpose of the mind. 396

What we have done without counsel let us undo or revoke when better advised. 416

See RELEASE.

Right

Right is threefold; of property, of possession, and of possibility. 259

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Right—(contd.)

No grant, no sale, no gift, is valid for ever, unless the donor, at the time of the contract, is seized of two rights; namely, the right of possession and the right of property. 331

Every right is either made by consent, or is constituted by necessity, or is established by custom. 338

When two rights concur in one and the same person, it is the same as if they were in separate persons. 389

See ENJOINTMENT OF PROPERTY, INJURY, REMEDY, SOVEREIGN.

River

See NATURAL RIGHTS.

Risk.

See BURDEN, LOSS, VENDOR AND PURCHASER.

Sale

See ALIENATION, ASSIGNMENT, TRANSFER, VENDOR AND PURCHASER.

Sea

See ANIMALS, NATURAL RIGHTS.

Self-defence.

See PRIVATE DEFENCE.

Senators

The senators are part of the king's body. 452

Silence in the senate is a fault. 459

Service

Bond-service is a right by which my property is subject to the rule or person of another. 454

See LANDLORD AND TENANT.

Silence

See FRAUD, SENATOR.

Similarity

What avails in one of two similar things will avail in the other. 416, 459

Legal similarity is a similar reason which governs various cases when compared with each other. 459

What is like is not the same, for nothing similar is the same. 470

See PRECEDENTS.

Simplicity

Questions, the more simple they are, are more lucid. 296

Too much subtlety is blamed in law, for such nice pretence of certainty confounds legal certainty. 314, 460

Demands, questions, and claims ought to be simple. 443

Simplicity is favourable to the laws. 460

Slaves

Slaves are made so or are born so. 453

See PUNISHMENT.

Soil

See LAND, WATER.

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Sovereign

The wife of the emperor is not exempted from the laws. 53
 The benefit of a prince ought to be lasting. 57
 In doubtful cases the presumption is always in favour of the king. 218
 The best shall be taken for the king. 286
 A grant by the king ought to be made from certainty. 90
 The special rights of the king are not affected by general words. 251
 It behoves the prince to keep the laws by which he himself is preserved. 121
 The law is the soul of the king; and the king is the soul of the law. 267
 The law is not to be violated by the king. 270
 The prince's rescript avails not against law. 431
 The king should be subject to the law, because the law creates the king. 440
 The king protects law and the law protects right. 442
 The decrees of councils bind not our kings. 122
 The clause "of our special grace, certain knowledge, and mere motion" is of no avail in those things in which it is presumed that the prince was ignorant. 126
 The king cannot have an equal, much less a superior. 144
 All subjects are the king's servants. 339
 The king is the head and safety (guardian) of the common-wealth. 440
 A king is given to serve the kingdom, not the kingdom to serve the king. 440
 The king is greater than any single person, less than all. 440
 The king is monarch and emperor in his own kingdom. 440
 The king has no equal in his own kingdom. 440
 The king ought to be under no man; but he is under God and the law; for the law makes the king. 440
 A gift of the prince is understood without prejudice to a third party. 148
 The king can do nothing but what he is empowered by law to do. 312.
 Nothing is so much the property of sovereignty as to live according to the laws. 313
 The king cannot grant a favour on one subject to the injury and damage of others. 322
 The king cannot do what is unjust. 442
 This alone the king cannot do—that he cannot act unjustly. 440, 462
 The king can do no wrong. 441
 The king is not able to deceive, nor be deceived. 441

Sovereign—(contd.)

The mind of the sovereign is presumed to be coincident with that of the law, and with that which it ought to be, especially in dubious matters. 152
 The emperor is considered the only founder and expounder of the law. 215.
 The king is the living law. 440
 The king is bound to uphold the rights and inheritances of the church. 153.
 The crown is considered the guardian of the church. 153
 King's are called clerks. 428
 The king is a sacred person and mixed with the priesthood. 440
 The majesty of the empire is the safety of its protection. 216
 There is no interregnum in England. 218
 The king is not bound by any statute unless he be expressly named therein. 265
 The king is not bound by any statute unless expressly named. 443
 Neither time nor place affects the king. 299
 No time or place affects the king or the rights of the Crown. 332
 The king is always presumed to attend to the business of the realm for the good of all. 442
 Royal franchises relating to the Crown have emanated from the Crown by grant of kings. 275
 The king is the original of all franchises. 443
 The king's letters-patent shall not be void 278
 The right of coining money is included in those rights of royalty which are never separated from the kingly sceptre. 294
 No person should appeal to the king in any suit, unless he cannot obtain his right at home. 301
 Supreme power can dissolve, but cannot bind itself. 370
 Every grant of our lord the king ought to be taken strictly against our lord the king, when it can be understood in two ways. 386
 Every pardon ought to be taken according to the intention of the king, and not to the deception of the king. 386
 When the right of a king and the right of a subject concur, the king's right shall be preferred. 389
 That which belongs to no one belongs to the king. 417
 That which has received the assent of the sovereign possesses the force of law. 419
 Kings claim their title from nobleness of birth, dukes from deeds of valour. 428
 The kingly power is indivisible, and every other derivative power is similarly indivisible. 428

Sovereign—(contd.)

A kingdom is not divisible. 428
 The whole earth is ruled after the example of a king. 428
 The king is both a legal and politic person. 440
 The king never dies. 442
 The king can proceed to judgment in whatever Court he pleases. 442
 The king can grant a dispensation for a *malum prohibitum*, but not for a *malum per se*. 444
 No summons or citations are permitted to be served within the king's palace. 467
 As the highest power of a king is to be able to do all he wishes, so the highest greatness of him is to wish all he is able to do. 487
 Tribute, in its origin, is the patrimonial right of emperors and kings. 489
 See CLERGY, PRESUMPTION.

Statutes

See CONSTRUCTION.

Subtlety

See SIMPLICITY.

Succession

See INHERITANCE.

Suicide

It is a greater crime to kill one's self than another. 282

Suit

See Actions, Writing.

Summons

A citation or summons is by natural right. 82

Summonses should not be granted before that it is explained for what cause a summons ought to issue. 82, 317

See SOVEREIGN.

Sunday

A dominical day (Sunday) is not a juridical day. 136

Surplusage

See USELESS THINGS.

Survivorship

The operation of the law is firmer and more powerful than the disposition of man. 195

The disposition of the law is stronger and more just than that of man. 196

The disposition of law is stronger and more powerful than that of man. 196

The right of survivorship does not exist among merchants for the benefit of commerce. 253

The right of survivorship is preferred to incumbences. 254

The right of survivorship is preferred to the last will and testament, or to the right by devise. 254

Survivorship—(contd.)

No property accrues to him who has no property in the survivorship. 312

Suspicion

Unusual clauses always excite suspicion. 82

Tenant

See LANDLORD AND TENANT.

Theft

The touching or removing of another's property with an intention of stealing, is theft. 103

A simple theft is not so heinous a crime that it should merit a capital punishment. 159

Theft is the fraudulent handling of another's property with an intention of stealing, against the will of the proprietor whose property it was. 201

There is no theft where the commencement of the detention arises through the ownership of the thing. 201

Theft is not committed without an intention or inclination of stealing. 201

The law held him as bad as a thief, who was willing to conceal the theft, and privately to accept a composition, without bringing the thief to justice. 261

The crime of theft is slavish; innocence alone is free. 454

See HUSBAND AND WIFE.

Time

Times are to be distinguished. 140

Distinguish times, and you will make laws agree. 140

A man may be capable and incapable at different times. 209

The hour is not considered of much consequence as to the substance of the business. 210

He who is prior in point of time is stronger in law. 377, 419

He who is first in point of time is more powerful in law. 408

What is first is true. 419

See DAY, DISCRETION, JUDGE, LIMITATION.

Tithes

Tithes are due to the parish priest. 121

Tithes are not to be paid from that which is given for tithes. 121

The church pays not tithes to the church. 153

Tithes belong to the parson by divine right, and canonical institution. 121

Tithes ought not to be paid where there is not an annual renovation, and from annual renovations once only. 121

Of whole trees tithes are not given; but of wood cut to be used, the tithes are given. 126

Tithes—(contd.)

With regard to the right of tithes, the cognizance of them belongs to the civil law. 127

An agreement not to take tithes avails not. 292

Title

It is better to have no title, than to possess one void and tainted. 287

A title is the just cause of possessing that which is our own. 475

One man can sustain or hold more characters. 484

See POSSESSION, RIGHT, TRANSFER.

Tort

Tort is contrary to law. 476

See INJURY.

Trade

See COMMERCE.

Transfer

Chattels captured or taken by pirates or robbers do not change their ownership. 41

Vainly you seek that which you will be immediately forced to surrender to another. 199, 326

What is ours cannot, without an act of ours, be transferred to another. 212

That which is mine cannot be alienated or transferred to another without an act of mine amounting to alienation or forfeiture. 416, 417

What is mine cannot be taken away without me. 416

No one should lose his property without his own act or negligence. 306

Nothing can be more in accordance with natural equity than to give effect to the will of a proprietor, who desires to transfer the property to another. 314

Land passes with its encumbrances. 472, 477

No one can transfer to another a right or title greater than he himself possesses. 308, 309

He gives nothing who has nothing. 312, 317

I ought not to be in a better condition than my author from whom the right passes to me. 317

One who has not cannot give. 302

Although a disposition of a future interest is void, yet it may become a declaration precedent taking effect upon the intervention of some new act. 277

See ALIENATION, ASSIGNMENT, DELIVERY, POSSESSION, SURVIVORSHIP.

Treason

The crime of treason exceeds all other crimes as to its punishment. 107

In high treason no one can be accessory, but only principal. 217

Treason—(contd.)

In more atrocious crimes the intent is punished though an effect does not follow. 218

In the most atrocious crimes slighter conjectures suffice, and the judge may stretch a point. 218

Treasure trove

The concealment of discovered treasure is fraudulent. 337

Treasure-trove is an ancient hiding of money &c., of which no recollection exists, so that it now has no owner. 475

Treasure-trove does not belong to the king, unless no one knows who hid it. 475

Trees

A tree is so called while growing; but wood when it ceases to grow. 45

See TITHES.

Trifles

The smallest is next to nothing. 289

See LAW.

Trust

A trust is an obligation of conscience to the will of another. 193

A right in the thing cleaves to the person of the beneficiary. 256

Use is a fiduciary dominion. 485

Use and estate or possession, differ more in the rule of the Court than in the rule of the matter. 485

Truth

Truth is powerful and prevails. 282

We can prevail not against truth. 312

What is first is true. 419

Truth, from whomsoever pronounced, is from God. 495

Truth is the mother of justice. 496

Truth fears nothing but concealment. 496

Truth which is not sufficiently defended is overpowered. 496

He who does not freely speak the truth is a betrayer of truth. 496

See DESCRIPTION, EVIDENCE, FRAUD, LITIGATION.

Uncertainty

See AMBIGUITY, CERTAINTY, DOUBT, LAW.

Unlawful condition

An unlawful condition is deemed as one not annexed. 91

Some conditions are odious, chiefly those against marriage and commerce. 91

Unlawful contracts

See VOID CONTRACTS.

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